

In the Circuit Court of the United States in and for the
Ninth Circuit, Northern District of California.

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XXXXXXXXXX XXXXXX XXXXX XXXX XXXXXX :
THOMAS H. FRENCH, :
Citizen of the State :
of New York. :
vs. :
JOSEPH KRELING, JOHN :
KRELING and WILLIAM :
KRELING, Citizens of :
the State of California. :
-----X----- :

This is a Bill in Equity, wherein it is alleged to the effect that Henry Brougham Farnie was and is, and at all times, a resident of the City of London, England, and the sole author and composer of the dialogue and words of the songs of the Operetta in the English language known as "Falke"; that the plaintiff is the sole owner of said Operetta; that the said Operetta is a dramatic and musical composition, and consists of parts to be spoken, and parts to be sung with suitable words, and of music composed for and intended to be played by an orchestra in conjunction with said words and said vocal parts; that the music was composed by one Chassaigne; that the dialogue and words of the songs of the Operetta are now, and always have been in manuscript, and never have been at any time published

printed, or in any way dedicated to the public; that the title of 'Falka' is original, and never prior to the composition of said dialogue and words of the songs, been used, dedicated, or known in connection with any other dramatic composition of any kind; that the dialogue and words and operetta were transferred on or about the 24th of January, 1884, from said Farnie to the complainant; that the defendants the Kreling Brothers, are co-partners running the Tivoli Opera House, and producing operettas in San Francisco; that they, ~~xxx~~ between the 1st day of December, 1885, and the 25th of January, 1886, without the consent or authority of the complainant, or anyone having authority to produce or perform any operetta of 'Falka' under said title, and in the said production used the said dialogue and words of the songs as composed by the said Farnie, and owned by the complainant.

That the authorship of the said operetta has been frequently asserted in the different newspapers and other channels of communication, especially devoted to theatrical matters, and is well-known and recognized throughout the United States, and attached to the Bill, and marked Exhibit A, is the affidavit of the author to the above effect. That the Operetta has been performed legitimately under the authority of the author and complainant throughout the United States, to large profit, and that whenever so performed, a per centage of the gross receipts have been paid by the Theater or party producing said play, to the complainant. That the respondents have not rendered

any account or statement of the box-office receipts for their performance of "Falka".

The bill prays that the respondents be called upon to account for all of the gross-receipts of the said Tivoli Opera House at which "Falka" was performed, and that they be required to deliver up to the complainant copies of the box-office statements, that a discovery may be had, and respondents be compelled to disclose the number of copies possessed by them of the Operetta; that a Receiver be appointed to receive and take charge of all copies of said Operetta, and that such other relief be granted as equity may deem meet.

The bill of complaint contains first of all, a specific denial of all the material allegations of the bill, and allege that the Opera has been dedicated to the public, with the consent of the authors, and was entered in Stationer's Hall, a Register, in said City of London.

The respondents admit that they are the proprietors, and run the Theater known as the Tivoli Opera House. They allege that they purchased in the open market a printed and published copy of an Operetta known as "Falka". They admit that they produced the Operetta hereinbefore mentioned for the period of twenty-two days, beginning on the 4th day of January, 1886.

PROOFS TAKEN.

Henry Farnie, residing at Oxford Mansions, London, England, testifies under a commission duly issued out of this Court, and directed to the Consul-General for the United States, London, England. He states that he is a dramatic author, formerly residing at Oxford Mansions, London, his present residence is at the "Albany" Piccadilly, London, England, and has always been a resident of London, England; that he is the absolute author of the dialogue, words and songs of the Operetta known as "Falka"; that the Operetta of "Falka" was adapted from the French original by ~~the French original~~ Leterriere and Van Loo, and it was adopted into the English language by himself, Farnie; that the music was written by Francis Chassaigne; that the Operetta consists of ~~xx~~ a libretto in three Acts, and a musical score; that the dialogue and words and songs of said Operetta, and spoken parts of the Operetta have never been published. The musical score has been published, with the words of the songs so set to music. No other publication of the Operetta of "Falka" has, in any form whatever taken place; that the dialogue, libretto, and stage business etc., have never been published; that the title "Falka" is an original title, composed and originated and affixed to the said original adaptation by himself, and prior to the composition of the said dialogue and words the songs of the said Operetta of "Falka" had never been used in connection

with any other composition or Operetta whatsoever. That said title was valuable property in connection with its use as a designation for the said Operetta, and was the means of identifying said work. Its value arises as a trademark from the Operetta having been played and known throughout the entire British Dominion and Colonies, under the designation of "Falka".

On the 24th day of January, 1884, after the composition of said Operetta he was the sole owner and proprietor thereof. On said date there was a sale of said property made. That he sold all of the real title and interest he had in the adaptation of "Falka" to Mr. Samuel French for his use in the United States of America only. The consideration named in the assignment was one dollar. The actual consideration was an agreed portion of the profits of the representation. That he never assented to, or acquiesced in the public representation of the said Operetta by the respondents themselves, or by any other person not specially licensed to represent the same. That the authorship of said Operetta has been asserted in newspapers and other channels of communication, devoted to Theatrical matters, and said authorship is known and recognized throughout the United States, and has been constantly, during a period of three years; that said Operetta has been publicly performed throughout the United States by Mr. Samuel French, to whom it was assigned by him before publication. That the libretto never has been published; that he received profit from such performances under the

agreement he made with Mr. Samuel French. That said Operetta is valuable property. That royalties have always been paid to Mr. Samuel French, under the assignment aforesaid, but to what extent the witness is not prepared to say. That he repeats his reply to the sixth interrogatory, viz: the dialogue or spoken libretto of the Operetta has never been published. The musical score has been published with the words of the songs so set to music. No other publication of the Operetta of "Falka" has in any form whatever taken place. If any copy of said unpublished libretto has come into the use or possession of the Respondents, or any other unauthorized person, then I say that such copy has been obtained by fraud upon the proprietors of said Operetta of "Falka".

"I say my English adaptation of the French piece Le Droit D'Ainesse, entitled by me 'Falka' ~~xxx~~ is in many respects an entirely original work"; that to-wit, from the middle of the second Act to the end of the third Act, the plot and situations are entirely original. Four of the characters, viz: the Holy Father, the Princess Alexina, the soubrette Mina, and the Senechal, as also all the situation and dialogue appertaining to the characters, are entirely my own creation. The entire English dialogue of "Falka" is original and not one word translated from the French. The original French piece in fact only furnished me with the main outlines of the plot".

~~The~~ cross-interrogatories or questions directed by the respondents called for simply a reiteration of what

his direct answers were.

To the fifth cross-interrogatory, which is "State fully and particularly what personal knowledge if any you possess with relation to the composition of said title, and how and by whom affixed to the original or any adaptation", he says :

"As I have repeatedly stated before I composed the title and affixed it to the Operetta. I never knew the words in my twenty-five years of Dramatic life used as the title for any dramatic or other composition of a similar nature." He also says that the property was his on January 24th, 1884.

To the eighth cross-interrogatory he says: "I repeat the authorship of 'Falka' was recognized in newspapers everywhere. I have none of the newspapers with me at this office, but can produce any quantity if required.

The ninth cross-interrogatory is "Will you swear that said Operetta 'Falka', has never been published in book form by or with your consent, or the consent of the original authors or composers, or that the same has never been published or sold in book form in England or the United States, or that the same is not entered in Stationers Hall, London, England."

He answers: "I swear that the libretto of 'Falka' has never been published to my knowledge in book form by or with my consent as its author, and that the same has never been published in England, or the United States of America in book form, with my knowledge or consent. The title of

the libretto has been entered at Stationers Hall, London, England, and not the libretto itself, but this does not imply publication, and as a matter of fact, there has been no such publication."

The tenth interrogatory is, "Will you swear that these defendants and respondents, did not purchase a copy of the said Operetta of "Falka" in book form as published and sold to the public in open market in England, and the United States".

He answers "To the tenth cross-interrogatory I swear that the respondents could not have purchased in a legitimate manner any copy of the libretto of said Operetta "Falka" ~~the same never having been published or dedicated~~ or sold to the public, either in England or the United States of America, and that if any such property has come into the possession of the respondents it has been dishonestly acquired as I have before stated." Signed, H.B. Farnie. Examination taken and reduced to writing, and by the witness subscribed and sworn to this 11th day of January, A.D. 1887, before T. M. Waller, Commissioner, and certified to before Thomas M. Waller, Consul General of the United States of America, at London, England, before whom, he certifies, that the witness Henry Brougham Farnie appeared.

The testimony of Thomas H. French, the complainant, taken before a Commissioner in New York, is to the effect that he purchased the Operetta from Farnie on the date named by French, and that the same is valuable property, and is in manuscript except certain portions referring to

the song words; that the unauthorized production of Messrs. Kreling, has greatly damaged the complainant, and that he will not receive any royalty from the legitimate production of said Operetta of "Falka" in San Francisco. That his personal knowledge is that the Operetta was in manuscript, and some of it in book form. He knows this, receiving it from the author himself. He knows personally that it has not been dedicated to the public; that he has been a publishing manager for twenty years; that the name of an Opera and play is of value. He knows that the Operetta of "Falka" was not published fully, and that enough to secure the complainant his rights in this country when the normal decisions of the United States Courts, was kept in manuscript.

The testimony of Alfred Hays of London, England, was taken by the respondents. It is important, and is to the following effect:

His name is Alfred Hays; business address, 26 Old Bond street, London, England. He carries on the business of musical publisher. He knows the comic opera of "Falka".

Direct question by the respondents No.3 : "Did you cause the comic opera "Falka" to be published in book form, and if so, in what year, and where was the same circulated?"

To the third interrogatory he saith "Certainly not.
The words were printed for the use of the artists, to
learn their respective parts. The book was printed in 1883
and was never in circulation. Such books were kept by myself at my private residence, under lock and key, and

copies were handed to the stage manager by myself. As he required them, he would hand them to the artists to be used by them, only for the purpose of learning their respective parts."

Question No. 4: "Have copies of such partition books been in circulation since the time of publication, in the City of London, England?"

Answer: "They were never published and circulated. The book was only printed for the convenience of the artists to enable them to learn their parts."

Question No. 5: "Please look at the book marked Respondent's Exhibit A for identification, and state if the same was published at your place of business with others, being copies of the one now shown you?"

Answer: "I have looked at the Exhibit referred to, and I say that said book nor any counterpart thereof has never been published. It was merely printed for the private use of the artists as is the custom in this country (England) and is not now public property."

Question No. 6: "Do you know E. F. Steyne, Esq., of the Comedy Theater?"

Answer: "I do."

Question No. 7: "Did you file for record and cause to be entered at Stationers Hall, London, a copy of the book now shown you?"

Answer: "I did not. I have myself been to Stationers Hall, London, and I say there is no copy on file there, of the book now shown to me, nor is there at said Stationers

Hall, any book or printed copy of said Opera filed for record. It is not the custom to put on record or file copies of such works. It is not necessary before producing any play to file at Stationers Hall, the entire play,

In answer to question No. 11, he says: "I was not the publisher of the book. As before stated it was never published. The manuscript was handed to me for the purpose of being printed by Mr. H. B. Farnie."

In answer to question No. 12 he says: "An author or proprietor of a new play or opera, in order to protect his interest, registers at Stationers Hall, London, the title of the piece, giving particulars as to the author or composer thereof. I handed to the complainant to be annexed hereto as Exhibit B, a copy of an entry made by myself on the 30th day of October, 1883, in regard to said Opera "Falka", and such entry is the only thing that is requisite, according to English law to protect the right of representation in the United ~~States~~ Kingdom.

To the sixteenth and final interrogatory he says: "As before stated I never published such book, nor was such book ever in circulation or offered for sale, nor have any proceedings ever been taken or instituted against me for publishing books like the one now shown to me, for the simple reason that I have never published such."

I ask the Court now to look at Respondents Exhibit 1 or A. It is spoken of in the interrogatories directed by Respondents to Mr. Alfred Hays of London, as Respondents

A. It is marked by the Clerk of this Court as Respondents Exhibit 1.

This Exhibit was sent on by the respondents from San Francisco to London, and for the purpose of confronting the respondents in their production of the Opera in San Francisco.

The Court will observe that as Mr. Hays testifies, it was private print, for the use of the artists, and right under the title occurs the words "Right of representation and reproduction reserved." On the first page inside the cover in ink are written the names of the original cast in America, as follows: "Original cast in America, produced for the first time in America, Haverly's Broad Street Theater, Philadelphia, Tuesday March 4th, 1884." On the second page, inside the cover occurs in the same handwriting, the following words: "The property of F.J. McCarthy, presented to him F. F. Steyne, Comedy Theater, London, England."

The respondents in their interrogatories directed to Mr. Hays, ask him if he knows Mr. F. F. Steyne of the Comedy Theater, London, and he answers that he does. This makes the connection between Mr. Steyne of the Comedy Theater, London, and Mr. McCarthy, to whom, as is written this private print was given.

If the Court will look at the first page inside the cover, it will see that the part of "Tekeli", Sergeant of the Patrol, was taken in Philadelphia on the production on March 4th, 1884, by F. J. McCarthy. Thus the method of

getting this print from England to America is shown. Mr. Steyn of London, presents this private print to Mr. McCarthy, both being actors, one in England, and the other in America. From Mr. McCarthy's hands, it reached the respondents, and they claim that it is a new work.

In fact, they themselves, as I have above stated, sent it to England, hoping to prove that it was a publication, and thus avoid the situation in which they found themselves placed in the suit of Goldmark vs. Kraling, better known as the "Nanon" case.

No further argument is necessary to be presented in this case. The law applicable to the case of "Nanon", and the law as interpreted in the "Nanon" case is directly pertinent to this case, and in all respects is conclusive.

R E S U M E.

The authorship of the libretto and music, and the ownership of the same have been proven. The transfer of the title of the same for the United States to the complainant, is shown. The unauthorized production is proven. The fact that the production of "Falke" was given, is admitted in the pleadings. The use of the private libretto by the respondents unauthorized, and in the hope of showing it to have been a published libretto, is also proven. The respondents have fallen into their own trap in endeavoring

to have Mr. Hays of London prove this to be a publication, because on the contrary he testifies most firmly and conclusively, that instead of being a publication, it was just the opposite. He further adds to his deposition, a copy of the bill, of the title in the Secretary's Office Register.

The complainant respectfully submits that the prayer of the bill should be granted, that an accounting should be rendered, and that the copies of the libretto in the hands of the respondents should be delivered up, and that whatever further and equitable relief is meet in the premises should be granted.

James H. Hays
Solicitor for Complainant.

In testimony whereof, I have signed this bill

// James H. Hays

at New York, 13 January 1810

Done on Copy-right 7/1, 121 583 526.

In the District Court of the United States, Middle Judicial
District, Southern District of California.

Thomas H. Morgan,

Complainant,

-vs-

James Earl Ray, et al.,

Defendants.

No. 4035 In Equity

Interrogatories to be served
upon the Defendant James Earl Ray, et al., by the Plaintiff Thomas H. Morgan.
The following interrogatories are submitted to the Defendant James Earl Ray, et al.,
to be answered.

1. State your age, residence and occupation.

A.

2. Have you ever been arrested or convicted of any crime or offense?
If so, state the date, place and nature of the same, and the name of the
court and judge.

A.

3. If so, did you cause the same to be published in
any form, and if so, in what year, and where was the same
published?

A.

4. Give names of all persons who have been in contact with you
in the city of London,

Q. 1 Please look at book marked "Respondent's Exhibit A" for "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication.

A.

Q. 2 Please give the name of the person who is the author of the book "The Great Gatsby"?

A.

Q. 3 I'd like to see the record and cause to be returned as "The Great Gatsby", London, a copy of the book was shown to me? If yes, please give the name of the person who showed it to me.

A.

Q. 4 Please give the name of the person who is the author of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication. I want to see a copy of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication.

A.

Q. 5 Please give the name of the person who is the author of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication. I want to see a copy of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication.

A.

Q. 6 Please give the name of the person who is the author of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication. I want to see a copy of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication.

A.

Q. 7 Please give the name of the person who is the author of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication. I want to see a copy of the book "The Great Gatsby" and state if the same was published as a book in the United States, with the title, author, publisher and the date of publication.

Filed March 30, 1888.

L. J. . . .

Clark

()

Penalty

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

Thos. H. French

Complainant

VS.

Joseph Krelling, et al

Respondents.

Take notice that the Complainant has this day filed with the Clerk of the above Court his Cross-Interrogatories, of which the annexed are true copies, to be propounded to Alfred Hays Esq., 26 Old Bond Street, and 4 Royal Exchange Buildings, London, England.

Dated April 7th 1888.

Joseph D. Krelling

Solicitor and of Counsel for Complainant.

To, H. H. Lowenthal Esq.

Solicitor for Respondents.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

Thomas H. French

Complainant

VS.

No. 4035. In Equity.

Joseph Kreling, et als.

Respondents

Cross-Interrogatories to be propounded on behalf of Complainant herein to Alfred Hays Esq., 26 Old Bond Street and 4 Royal Exchange Buildings, London, England.

Q. 1. If in answer to the third question of the direct interrogatories you state that you have published the Opera Comique, written by H. B. Parnie in book form, will you answer yes or nay, whether the same was published by you under any consent, or contract, or agreement with said H. B. Parnie or any other person, who had any interest in said Opera?

Q. 2. If in answer to question four of the direct interrogatories, you state that such published book has been in circulation since the time of its publication, in the City of London, England, will you answer yes or nay, whether the same has been in publication under the consent and agreement of the composer of said Opera herein, H. B. Parnie, or any person having any interest therein as composer or assignee of composer?

Q. 3. Will you please state whether you know the composer of

said Operrata, H. B. Farnie to have ever dedicated his rights as
composer or author to any third party, or to any publisher by the
means customary under your English Statutes, and will you state
all and singular whatever you know regarding the present condi-
tion of the libretto of said Operrata as being in manuscript or
otherwise.

Respectfully submitted

Wm. T. B. B. B. B.
Solicitor for Complainant.

Enclosed herewith is a copy of the
written notice and of Complainant's cross-
interrogatories to be propounded before
the Court in No. 1300 Street, New
York Exchange Buildings, London England
is hereby admitted
in witness whereof T. W. Farnie that

I, L. S. B. SWYER, Clerk of the Circuit Court of the United States for the
Northern District of California, do hereby certify the foregoing to be a full, true and
correct copy of Interrogatories & Cross Interro-
gatories to be propounded to Alfred Fay.
Witness my hand and the seal of said Court this
Thomas H. French, ex Joseph H. French to
No. 4035 in said Circuit Court

Attest my hand and the seal of said Circuit Court, this
6th day of April A. D. 1888

L. S. B. Swyer, Clerk

By

W. W. M. M. M.
Deputy Clerk

of the Ninth Judicial Circuit
in and for the Northern District
of California - U. S.

James H. French
Complainant - and
John Treling, John Treling,
and William Treling
Defendants - Number 4035.

Declarations of Alfred Treling
a witness sworn and examined
under and by virtue of a
Commission issued out of
the Circuit Court of the United
States of the Ninth Judicial
Circuit in and for the
Northern District of California
U. S. in a certain cause
between defendant and at
issue between James
H. French Complainant
and Joseph Treling, John Treling,
and William Treling
Defendants. -

Alfred

H. W. J. W. W. W.

Commissioner

Alfred Hawks of No. 26 Rd
Road. West and No. 4 Road
Exchange Buildings, London
England, being duly sworn
to, deposes the truth. The whole
truth and nothing but the
truth, depose and say as
follows:—

1st.

1. The first interrogatory
he deposes, that name is Alfred
Hawks now business addresses
at No. 26 Rd Road West,
and No. 4 Road Exchange
Buildings, London England
where he is now on business
as a Music Publisher—

2nd

2. The second interrogatory
he deposes, is— to.

3rd

3. The third interrogatory
he deposes, Certainly not— The
words were printed for the
use of the artist to learn
their respective parts— the book
was printed in the 1883 and
was never in circulation— such
book

Alfred Hawks

Examiner

Alfred

were kept on myself as my
contd. } private residence under lock
and key and copies were
handed to the Stage Manager
or myself as he required
them and he would hand
them to the Artists to be
used by them only for the
purpose of learning their
respective parts.

4
Sixth. } to the fourth interrogatory he
saith, "it was never published
or circulated - the book was
only printed for the convenience
of the Artists engaged to enable
them to learn their parts."

5
Seventh. } to the fifth interrogatory he
saith, "I have looked at the
exhibit referred to - and I
say that said book, nor any
counterpart thereof, has never
been published - it was
merely printed for the private
use of the Artists - as is the
custom in this Country - and was
not and is not now Public Property."

Made in answer

Wm. H. H. H.

Sixth To the sixth interrogatory
he saith, No.

Seventh To the seventh interrogatory
he saith, No. it is
not -

Eighth To the eighth interrogatory
he saith, I have myself been
to Hakon's Hall, in London, and
saw there is no sale or file here of the book
now there is one - now is there at said
Hakon's Hall and book or single
copy of said Opera filed for record -
it is not the Custom to put on
record or file titles of such books.

Ninth To the ninth interrogatory
he saith, No - it is not -

Tenth To the tenth interrogatory
he saith, No - it is not the
Custom to place or record such books
in Manuscripts - Eleventh

Myself in witness

Alfred

Eleventh. To the eleventh interrogatory
he said, - was not the publisher
of the book - as before stated,
it was never published - the
manuscript was handed to me
(for the purpose of ~~setting~~
being printed) by Mr.
H. B. Tarnie.

Twelfth. To the twelfth interrogatory
he said, The author, for
protection of a new class or
other and order to protect
his interest registers at -
rationers, & Hall London
the title of the piece giving
particulars as to the author's
or author's name -
and to the Commissioner
to be annexed thereto as
exhibit B copy of an Entry
made by myself for the
Library Dec. of October 1873
in regard to said Opera -
"Falke" - and such Entry
is the only thing that is requisite
according to English law to protect
the right of representation in the
United Kingdom -

- Kirkland

Monmouth, 1873

Wm. H. Tarnie

subscribed to the subsequent interrogatory
re faith - know of nothing -

subscribed to the subsequent interrogatory
re faith, is here stated I
never published such book -
nor was such book ever
in circulation or offered
for sale - nor have any
proceedings ever been taken
or instituted against me for
publishing books like
the one now shown to me -
for the simple reason that
I have never published such.

Cross Interrogatories.

subscribed to the first cross interrogatory
re faith, the answer of the
kind direct interrogatory was
in the negative - that
I did publish and sell was
the title of said Opera -
and I hand to the Commissioner

Wm. C. C. C.

Commissioner

Alfred

First
+
Cont.
//

to be annexed hereto as exhibit C
a copy of said book -
also sent to the Commission
to be annexed hereto as
exhibit D copy of the index
at Stationers' Hall of said
book -

Second
+

to the second cross interrogatory
he said, the reply to the
fourth interrogatory was
in the negative -

Third
-

to the third cross interrogatory
he said, he answered to the
first part of his cross
interrogatory, that he
knew Mr. J. F. Farnie
assigned to Mr. Smith the
right to produce said
opera "Zinka" in the
United States of America;
and said that the present
condition of the libretto of said
opera "Zinka" is that it
is in printed form - and I take
therein in my reply to the first cross inter-
rogatory sent a copy thereof as exhibit C.

Examination taken, reduced
to writing, and put in by me, and
deposited in the Court's Hall of
May 1888 before me, J. F. Farnie.

[Signature]

Time of making the Entry

Title of Dramatic Piece or Musical Composition

Name and Place of Abode of the Author or Composer

Name and Place of Abode of the Proprietor of the sole Liberty of Representation or Performance

Time and Place of First Representation or Performance

October 30 1883

Further Opera Comique written by

Lyrics composed by F. B. Strauss

Lechassagne

St. Raphael 20th Oct 1883

br. Boulevard de Chateaufort Lodge Comedy Theatre

Paris

Chateaufort Road

Paris

Paris

Chateaufort Road

Paris

Henri Strauss

middlesex

middlesex

Paris

Chateaufort

Paris

middlesex

AT THE EXECUTION OF
THE EXAMINATION OF
THE T. French and
others, the following
H. Strauss, F. B. Strauss
THEY HAVE SIGNED
AND SIGNED
AT THE EXECUTION OF
THE EXAMINATION OF
THE T. French and
others, the following
H. Strauss, F. B. Strauss
THEY HAVE SIGNED
AND SIGNED

AT THE EXECUTION OF
THE EXAMINATION OF
THE T. French and
others, the following
H. Strauss, F. B. Strauss
THEY HAVE SIGNED
AND SIGNED

COMMISSIONER
WITNESS

I hereby certify that the above written is a true Copy of an Entry in the Book of Registry of Copyrights and Assignments kept at the Hall of the STATIONERS' COMPANY, pursuant to Act of Parliament, 5 & 6 Vict, c. 45.

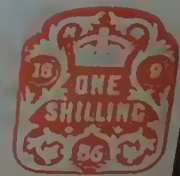
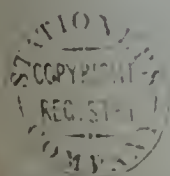
Witness my hand, this

tenth

day of May 1888

Ann Storer

Registering Officer appointed by the Stationers' Company



Kingdom of Great Britain and Ireland, }
County of London England. }
Hon^{ble} M. Walter, Consul General
of the United States of America
at London England, the
Commissioner named in
said Commission, do hereby
certify that the witness Alfred
Frazer appeared before me and
after being duly sworn, his evidence
was taken down (as Francis
William Tugwell, Deputy Consul
General of a licenced Person
abstained but me in to look
you that purpose) and read
over and corrected by him,
after which he subscribed the
same in my presence on the
eleventh day of May 1877 at
my office in the Consulate -
General of the United States,
America situated No. 12 White
Tiers Lane, Liverpool
street in the City of London -
England abroad and that I
have personal knowledge of said
witness -

Witness my hand

W



Witness Whereof
have subscribed at
New York and signed
me official Seal
at London the 10th
day the 10th
day of May -
1888

Witness in presence
of the undersigned
and signed

The Latest London Success



Comic Opera.

IN 3 ACTS.

of MM. Leterrier and Vanloo.

English Version by

H. B. FARNIE.

MUSIC BY

F. CHASSAIGNE.

Vocal Score

Gems

Piano Score

WHITE, SMITH & CO.

BOSTON

210 Washington St.

CHICAGO

546 Washington St.
Edw. W. Farnie & Co.

ARE THE BEST IN THE WORLD. 742 & 744 Market and 10 & 12 Dupont Streets.

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Shaving 20c. Baths 25c. Shaving 20c.

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Christen's Candies in great quantities. Choice of Candies and Chocolates. Smoked Fish.
Christen's Ornamental Cakes. Choice of Cakes and Breads. Sausages and Hams.
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PROGRAMME

THE LINDSAY
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W. W. LINDSAY

MONDAY, JANUARY 41, 1886

ENTERTAINMENT NOTICE

FALKLAND

FALKLAND

FUN ON THE BRISTOL.

E. MESSENGER'S CLOAK Store,

COR. POST & DUPONT STREETS.

Go to the "Louvre Branch," Market, Powell & Eddy Sts

Restaurant, Oysters, Genuine Original Budweiser etc.
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The Coldest of the City.

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The Berlin
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UMBRELLAS, PARASOLS,
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Colon Dental Association,
Established in 1881
ENTRANCE, 300 Market Street, S. F.
Gas Specialists.

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Folding Beds

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103 Market St.



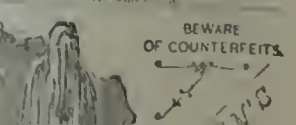
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CURE FOR
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California Hall's Pulmonary Balsam
AND TAKE NO OTHER.

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414 Sanson St.



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Kramich & Bach,
E. Gabler & Bro.,
and C. Remisch
PHINOS
M. GRAY,
208 Post Street,
San Francisco, Cal.

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PHILADELPHIA LAGER BEER
On Draught.
The Finest Lunches at all Hours
Pool and Billiards
KRAMICH & BACH, Prop.

NICOLL
THE
TAILOR'S
NEW
STYLES
THIS SEASON.

PANTS
SUITS
ON HAND.

Nicoll, the Tailor,
316
Market Street,

SUTTER ST. BATHS
25c
25c

Main Entrance Y. M. C. A. Bldg
Shaving and Hairdressing Parlor in
Connection

H. D. WITTE, Prop.

Do not fail to visit. Presents are
Porcelain & Miniatures
Water Colors
Made on site.

Elie
JONES & LOTZ, Props.

414 Market St.
JONES & LOTZ, Props.

Arule
DRINK

Uncle Sam's
Fredericksburg Lager Beer,
GAMBRINUS BOTTLING COMPANY
MONMOUTH & LEBANON STS., N. Y.

United States Circuit Court *North Circuit*
District of *California*.

-----:)
Thomas H. French,)
)
A citizen of the State of New York, brings)
this his bill,)
)
-vs-)
)
Joseph Kroling and John Kroling, William)
Kroling, citizens of the State of California)
-----:

Your orator complains :-

- (1) That he is a citizen of the United States and a resident of the State of New York and is the sole proprietor of a certain operetta in the English language known as "Falka".
- (2) That Henry Brougham Farnie at all the times hereinafter mentioned was and now is a resident of the city of London, England, and the solo author and composer of the dialogue and words of the songs of said operetta, which is an adaptation into the English language original with said Farnie.
- (3) That the said operetta Falka is a dramatic and musical composition and consists of parts to be spoken and of parts to be sung with suitable words and of music composed for and intended to be played by an orchestra in conjunction with said words and said vocal parts. That said music was composed by one Chassaigne.
- (4) That the dialogue and words of the songs of the said operetta Falka are now and always have been in manuscript and have never at any time been published, printed or in any way dedicated to the public or made in form of publication.

(5) Your orator further alleges that the title "Falka" was and is an original title, originated, composed and affixed to the said original adaptation by the said Farnie and never had, prior to the composition of said dialogue and words of the songs of the said operetta, been used, dedicated or known in connection with any other dramatic composition of any kind; and the said title has become well and favorably known as an exceedingly valuable property in connection with its use as a designation or name for the said operetta so originated and composed by the said Farnie, and as a means of identifying his said work.

(6) Your orator further alleges that on the 24th day of January 1884, and after the said dialogue and words of the songs of said operetta "Falka" had been thus composed and written by the said Farnie, the said Henry Brougham Farnie, being then the sole owner and proprietor thereof, sold, assigned, transferred and set over unto your orator, his executors, administrators and assigns to his and their own use and benefit, the said dialogue and words of the songs of the said operetta, and the manuscript thereof, and all the right, title and interest of said Farnie in and to the same and the production thereof on any stage in the United States, and in and to all profit, benefit and advantage that should or might arise from the production of said operetta in the United States.

(7) Your orator further alleges upon information and belief that the respondents *Joseph John Williams* Kreling and ~~Kreling~~ were, during the years 1883 & 1886 copartners in business in the city of San Francisco and were the proprietors, lessees or managers of a certain place of amusement situated in the city of San Francisco, California, known as the Tivoli Opera House.

That said respondents between the *first* (1) day of *December* 1885 and the 25th day of January 1886, without the consent or authority of your orator, or any one having the right to grant such authority, and without having paid any compensation whatever for the right to produce the same, did produce the said operetta under the said title "Falka" and in said production used the said dialogue and words of the songs as composed by the said Farnie and owned by your orator.

(8) Your orator further alleges that neither the said Farnie nor your orator has even assented to or acquiesced in the public representation of the said operetta by the said respondents, nor by any one not specially licensed to represent the same; and the authorship of said operetta has been frequently asserted in the different newspapers and other channels of communication specially devoted to theatrical matters and news and has been and is well known and recognized throughout the United States. *and attached hereto & marked Exhibit "A" is the affidavit of the author to the above effect, which affidavit is made a part of this Bill.*

(9) That the said operetta has been, under authority granted by the author of the said operetta and by your orator publicly performed throughout the United States, by reason whereof large profit has been realized by the said author and your orator; and that the said operetta is an exceedingly valuable property to your orator. That whenever the same has thus been produced, the persons authorized to produce the same have always paid to your orator *as per centage* ~~percentage~~ upon the gross amount received from said productions by way of compensation and royalty, which is a fair and reasonable compensation for the right to produce the same.

(10) That the respondents have not rendered any account or statement of the box office receipts at their said place of amusement to your orator or to any one in his behalf, and have wholly neglected to pay any royalty for such performances by them, although the gross receipts for the production of the said operetta "Falka" at their said place of amusement has, as your orator charges on information and belief, amounted to a very large sum of money; and the said respondents refuse to render any such account or make any payment to your orator.

YOUR ORATOR THEREFORE PRAYS : that the respondents be required to answer the premises under oath and to account to and with your orator for all the gross receipts of their said place of amusement known as the Tivoli Opera House in the city of San Francisco, at which the said operetta has been performed; and that they be required to deliver to your orator copies of the box office statements showing the gross receipts at the said place of amusement at each performance of the said operetta so produced as aforesaid; and that they be required to pay over to your orator as damages caused by said unauthorized performances, a sum equal to ten per cent. upon the gross receipts, with interest thereon.

That a discovery may be had and the respondents be compelled to disclose the number of copies possessed by them of the said operetta and as to where and by what means the respondents obtained the same or any colorable imitation or simulation thereof.

That a receiver be appointed to receive and take charge of all copies of the said operetta in the possession or under the control of the said respondents for the purpose of transferring

the same to your orator.

That your orator have such other and further relief in the premises as may seem meet and the nature of the case may require.

Joseph S. Robin
 Solicitor General for
 Complainant

Very

City & County of New York, ss :

Thomas H. French being duly sworn, says : he is the complainant herein; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and that, as to those matters, he believes it to be true.

Sworn to before me)

January 31st 1886.)

Thomas H. French

James A. Flack

Notary Public,

STATE OF NEW YORK,

City and County of New York, } ss.

I, **JAMES A. FLACK**, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY, That

Skinner C. Doty

before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said City and County, duly appointed and sworn and authorized to administer oaths to be used in any Court in said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the Seal of the said Court and County, the day of

James A. Flack 1886

(222)

L.R.G. I Henry Brongham Jarvie
of No 65 The Albany Piccadilly in the
County of Middlesex Dramatic Author
do solemnly and sincerely declare that

1. That no printed libretto of my opera
named "Falke" has ever been published
and was only printed for private use in the London Theatre where
it was produced and that I never authorized its use by
Messrs. Hagling Brothers 410 & 412 San Francisco U.S.A.
and I make this solemn declaration
conscientiously believing the same to
be true and by virtue of the provisions
of an Act made and passed in the fifth
and sixth years of the reign of his late
Majesty King William the Fourth intituled
"An Act to repeal an Act of the present
Session of Parliament intituled "An
Act for the more effectual abolition of
Oaths and Affirmations taken and made
in various departments of the State"
and to substitute declarations in lieu
thereof and for the more entire
suppression of voluntary and extra
judicial oaths and affidavits and to
make other provisions for the abolition
of unnecessary oaths

Declared and Subscribed
at 32 Caven Street Strand
in the County of Middlesex
this 11th day of March 1886
Before me

H. B. Jarvie.

L. F. E. Spragg

A Commissioner to administer Oaths
in the Supreme Court of Judicature

Circuit Court of the United States Ninth
Circuit, District of California —
— In Equity. —

Thomas A. French

— vs. —

Joseph Kreling,
John Kreling^{and}
William Kreling.

And now come the above named de-
fendants and respondents, and now and at all
times hereafter saving to themselves all and all
manner of benefit or advantage of exception, or
otherwise that can or may be had or taken to
the many errors uncertainties and imperfections
in said Bill contained, and answering the same
or so much thereof as these defendants are advis-
ed is material or necessary for them to make
answer to say. —

First:

These defendants say to
their or either of their knowledge or belief, they or
either of them do not know and have never been in-
formed save by said plaintiffs Bill of complaint^{and}
cannot set forth as to their or either of their belief
or otherwise, whether the said complainant is a cit-
izen of the United States, or a resident of the State of
New York. And deny that the complainant is

PAGE

1 the sole proprietor, or at all of a certain Operetta
2 or any Operetta in the English language known
3 as Talka. —

4 ~~True~~ True defendants say to
5 them or either of their knowledge or belief, they
6 or either of them do not know and have never been
7 informed, save by said plaintiffs bill of complaint,
8 and cannot set forth as to their belief or otherwise,
9 whether one Henry Broadham Farnie at all or at
10 any time was or now is a resident of London Eng-
11 land or the sole author or composer or either of
12 the dialogue or words of ~~the~~ the songs of said operetta, or which is an adapta-
13 tion into the English language original or
14 otherwise with said Farnie. —

15 Third:

16 And these defendants
17 deny that the dialogue and words, or either, of
18 the songs of said operetta "Talka" are now and
19 always have been in manuscript, or have never
20 at any time been published, printed or in any
21 way dedicated to the public or made in form
22 of publication, but on the contrary said operetta
23 in its entirety including the dialogue, the words
24 of the songs, and music, and every thing appertain-
25 ing to said operetta were published in Book
26 form in the English language by Alfred Hays
27 in the city of London England and publicly sold
28 at the place of business of said Alfred Hays at
the city of London, England, and other publishing

1 houses, by and with the consent of the composers and
2 authors of said operetta since the year 1883 and
3 said operetta as published was entered in the
4 State Hall, a register in said City of London, sub-
5 sequent to the publication of the same. That the
6 vocal score and songs, and the words of the songs
7 were also published and sold in book form
8 throughout England and the United States by and
9 with the consent of the author, and these defend-
10 ants who have for several years last past been the
11 proprietors of a theatre known as the "Civoli Opera House"
12 in the city and county of San Francisco, State of
13 California and as such have produced in their said
14 Theatre a large number of operas, Grand ^{and} Comique,
15 and these defendants in open market among others
16 purchased a printed and published copy of an
17 operetta known as "Talka" in its entirety and pro-
18 duced the same at their said opera house in the
19 city and county of San Francisco which said oper-
20 etta was prior to the production thereof, duly de-
21 dicated to the public as aforesaid. —

22 Talka.

23 And these defendants
24 say to their or either of their knowledge or
25 belief, they or either of them do not know and
26 have never been informed save by said plaintiffs
27 Bill of complaint and cannot set forth as to
28 their or either of their belief or otherwise whether
the title "Talka" was or is an original title

1 originated, composed or affixed to the original or any
2 adaptation by the said Tarnie or never had
3 prior to the composition of said dialogue or words
4 of the songs of the said operetta been used, de-
5 scribed or known in connection with any other
6 dramatic composition of any kind, or that the
7 said title has been well or at all known in
8 connection with its use as a designation or
9 name for the said operetta is originated or com-
10 posed by the said Tarnie, or at all, or as a means of id-
11 entifying his said work. —

12 Fourth: And these defendants
13 say, to their or either of their knowledge or belief
14 they or either of them do not know and have
15 never been informed save by said plaintiffs Bill
16 of complaint, and cannot set forth as to their or
17 either of their relief or otherwise, whether, on the
18 24th day of January 88+, or at all, or after the
19 said dialogue or words of the songs of said oper-
20 etta "Tarka" had been thus or otherwise composed
21 or written, or either or at all, by said Tarnie,
22 the said Henry Brougham Tarnie being then
23 or at all, the sole owner or proprietor thereof, or
24 either sold, assigned or transferred or set over
25 unto complainant his executors, administrators or
26 assigns to his or their use or benefit or either or
27 at all, the said dialogue or words of the songs
28 of the said operetta or either, or the manuscript

1 thereof or all, or any the right, title or interest
2 of said Tarnie, in or to the same or the produc-
3 tion thereof on any stage in the United States,
4 or in, or to all, or any profits benefit or advantage
5 that should or might arise from the production
6 of said operetta in the United States, or at all,
7 or either. —

8 Sixth:

9 And these defendants
10 further answering said Bill of complaint admit
11 having produced the operetta heretofore
12 mentioned at their said opera house for the period
13 of twenty-three days, beginning on the 1st day of
14 January 1886; but deny that the same was
15 so produced without the consent or authority of
16 complainant, or any one having the right to
17 grant such authority, or without having paid com-
18 pensation whatsoever for the right to produce
19 the same under the said title "Taika", or in
20 said production used the said dialogue or
21 words of the songs as composed in said Tarnie
22 and owned by complainants, or at all or either. —

23 Seventh:

24 And these defendants
25 deny, that neither said Tarnie nor complainant
26 have ever assented to, or acquiesced in the public
27 representation of the said operetta by these defend-
28 ants, nor by anyone not specially licensed to
represent the same, but on the contrary the said
operetta was printed, published and de-
clared to be

Page 1 public long prior to the alleged transfer to com-
2 plaintant as aforesaid; and these defendants say to
3 their or either of their knowledge or belief, they
4 or either of them do not know and have never
5 been informed save by said plaintiff's Bill of complaint
6 and cannot set forth as to their or either of their belief or
7 otherwise, whether the authorship of said opera has
8 been frequently, or at all, asserted in the different
9 or any newspapers or channels of communication
10 specially or otherwise or at all devoted to the
11 actual matters or news, or either or at all, or
12 that has been or is, well known or otherwise, or at all,
13 or recognized throughout the United States; as attach-
14 ed to said complaint marked "Exhibit A" is the af-
15 fiant of the author, or pretended or alleged
16 author to above, or any effect. —

17 — And these defendants deny all in all
18 manner of unlawful combination and confeder-
19 acy wherewith there are by the said Bill charg-
20 ed without this, that there is any other matter,
21 cause, or thing in the said complaint's said
22 Bill of complaint contained, material or neces-
23 sary for these defendants to make answer unto,
24 and not herein and hereby well and
25 sufficiently answered, confessed, traversed, and
26 avoided or denied, is true to the knowledge or
27 belief of these defendants; all of which matters
28 said things these defendants are ready and

1 willing to aver, maintain and prove as

1 willing to over, maintain and prove as this
 2 honorable Court shall direct; and humbly pray
 3 it be bona dismissed with their reasonable
 4 Costs and charges, in this behalf most wrong-
 5 fully sustained.

6 H. H. Lowenthal.

7 Solicitor for Respondents.
 8
 9
 10

11 United States of America.

12 State of California.

ss

13 City & County of San Francisco.

14 — Joseph Kreling, John
 15 Kreling and William Kreling being severally duly
 16 sworn, each for himself doth depose and say; That
 17 he is one of the defendants and Respondents herein;
 18 that he has read the foregoing answer to com-
 19 plainant's Bill of complaint and knows the contents
 20 thereof; that the same is true of his own knowledge,
 21 except as to the matters therein stated to be al-
 22 leged on information and belief, and as to those mat-
 23 ters he believes it to be true —

24 Sworn to before me, this _____ day of _____, 18__
 25 _____

26 John Kreling
 27 William Kreling

28 Charles H. Reed
 Notary Public

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT,

NORTHERN DISTRICT OF CALIFORNIA.

THOMAS H. FRENCH

Complainant

VS

JOSEPH KRELING, et al.,

Defendants.

IN EQUITY.

No. 4030

FINAL DECREE

PRESENT, the HONORABLE

Joseph M. Kenna
U.S. Circuit Judge

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California held at the City of San Francisco, on the 29th day of August in the year of our Lord, one thousand eight hundred and ninety-four.

The Court having on the 13th day of August, 1894, rendered its decision in favor of the complainant, calling for a decree which includes an accounting and injunction and costs; and an accounting and costs having been settled and paid by the defendants to the complainant, in the total sum of Two hundred and fifty (\$250) Dollars, in full for all demands against the defendants, their administrators, executors, successors and assigns, for the costs of this suit, and for the proceeds due the complainant for all performances of the said opera of "FALKA" given prior to August 27, 1894; and the respective parties hereto and

their solicitors having stipulated that a decree shall forthwith be *entered* in favor of the complainant and against the defendants their administrators, successors, executors and assigns, perpetually enjoining them from producing the opera "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents;

Thereupon upon consideration thereof, it is ordered, adjudged and decreed, and the court both hereby order, adjudge and decree as follows, to wit:

That Thomas H. French of the City, County and State of New York, the complainant herein, was at the commencement of this suit, and still is, the sole owner and proprietor of a certain opera or operetta in the English language known as "FALKA";

And it is further ordered, adjudged and decreed that the defendants, their administrators, successors, executors and assigns be and they are hereby perpetually enjoined from producing the said opera of "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents.

Joseph M. Hanna
Circuit JUDGE.

United States Circuit Court *Fourth Circuit*
District of *California*

-----:)
T h o m a s H. F r e n c h,)
A citizen of the State of New York, brings)
this his bill,)

-vs-

Joseph R. Kreling and John Kreling, William
Kreling, citizens of the State of California)
-----:

Your orator complains :-

(1) That he is a citizen of the United States and
a resident of the State of New York and is the sole proprietor of
a certain operetta in the English language known as "Falka".

(2) That Henry Brougham Farnie at all the times
hereinafter mentioned was and now is a resident of the city of
London, England, and the sole author and composer of the dialogue
and words of the songs of said operetta, which is an adaptation
into the English language original with said Farnie.

(3) That the said operetta Falka is a dramatic and
musical composition and consists of parts to be spoken and of
parts to be sung with suitable words and of music composed for
and intended to be played by an orchestra in conjunction with
said words and said vocal parts. That said music was composed by
one Chassaigne.

(4) That the dialogue and words of the songs of the
said operetta Falka are now and always have been in manuscript
and have never at any time been published, printed or in any way
dedicated to the public or made in form of publication.

(5) Your orator further alleges that the title "Falka" was and is an original title, originated, composed and affixed to the said original adaptation by the said Farnie and never had, prior to the composition of said dialogue and words of the songs of the said operetta, been used, dedicated or known in connection with any other dramatic composition of any kind; and the said title has become well and favorably known as an exceedingly valuable property in connection with its use as a designation or name for the said operetta so originated and composed by the said Farnie, and as a means of identifying his said work.

(6) Your orator further alleges that on the 24th day of January 1884, and after the said dialogue and words of the songs of said operetta "Falka" had been thus composed and written by the said Farnie, the said Henry Brougham Farnie, being then the sole owner and proprietor thereof, sold, assigned, transferred and set over unto your orator, his executors, administrators and assigns to his and their own use and benefit, the said dialogue and words of the songs of the said operetta, and the manuscript thereof, and all the right, title and interest of said Farnie in and to the same and the production thereof on any stage in the United States, and in and to all profit, benefit and advantage that should or might arise from the production of said operetta in the United States.

(7) Your orator further alleges upon information and belief that the respondents *Joseph John William* Kroling and ~~Kroling~~ were, during the years 1885 & 1886 copartners in business in the city of San Francisco and were the proprietors, lessors or managers of a certain place of amusement situated in the city of San Francisco, California, known as the Tivoli Opera House.

Deputy Clerk.

That said respondents between the *first (1)* day of *December 1885* and the 25th day of January 1886, without the consent or authority of your orator, or any one having the right to grant such authority, and without having paid any compensation whatever for the right to produce the same, did produce the said operetta under the said title "Falka" and in said production used the said dialogue and words of the songs as composed by the said Farnie and owned by your orator.

(8) Your orator further alleges that neither the said Farnie nor your orator has even assented to or acquiesced in the public representation of the said operetta by the said respondents, nor by any one not specially licensed to represent the same; and the authorship of said operetta has been frequently asserted in the different newspapers and other channels of communication specially devoted to theatrical matters and news and has been and is well known and recognized throughout the United States. *and attached hereto & marked Exhibit "A" is the affidavit of the author to the above effect, which affidavit is made a part of this Bill.*

(9) That the said operetta has been, under authority granted by the author of the said operetta and by your orator, publicly performed throughout the United States, by reason whereof large profit has been realized by the said author and your orator; and that the said operetta is an exceedingly valuable property to your orator. That whenever the same has thus been produced, the persons authorized to produce the same have always paid to your orator ~~as per contract~~ upon the gross amount received from said productions by way of compensation and royalty, which is a fair and reasonable compensation for the right to produce the same.

(10) That the respondents have not rendered any account or statement of the box office receipts at their said place of amusement to your orator or to any one in his behalf, and have wholly neglected to pay any royalty for such performances by them, although the gross receipts for the production of the said operetta "Falka" at their said place of amusement has, as your orator charges on information and belief, amounted to a very large sum of money; and the said respondents refuse to render any such account or make any payment to your orator.

YOUR ORATOR THEREFORE PRAYS : that the respondents be required to answer the premises under oath and to account to and with your orator for all the gross receipts of their said place of amusement known as the Tivoli Opera House in the city of San Francisco, at which the said operetta has been performed; and that they be required to deliver to your orator copies of the box office statements showing the gross receipts at the said place of amusement at each performance of the said operetta so produced as aforesaid; and that they be required to pay over to your orator as damages caused by said unauthorized performances, a sum equal to ten per cent. upon the gross receipts, with interest thereon.

That a discovery may be had and the respondents be compelled to disclose the number of copies possessed by them of the said operetta and as to where and by what means the respondents obtained the same or any colorable imitation or simulation thereof.

That a receiver be appointed to receive and take charge of all copies of the said operetta in the possession or under the control of the said respondents for the purpose of transferring

Deputy Clerk.

the same to your orator.

That your orator have such other and further relief in
the premises as may seem meet and the nature of the case may
require.

*Joseph S. Keeble
Attorney & Counselor
for Complainant*

Deputy Clerk.

City & County of New York, ss :

Thomas H. French being duly sworn, says : he is the complainant herein; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief and that, as to those matters, he believes it to be true.

Sworn to before me)
January 31st 1886.)

Thomas H. French

Spencer C. Doty

Notary Public,

STATE OF NEW YORK,
City and County of New York,) ss.

I JAMES A. FLACK, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, DO HEREBY CERTIFY,
That

Spencer C. Doty

before whom the Annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said City and County, duly appointed and sworn and authorized to administer oaths to be used in any Court in said State, and for general purposes, and that his signature thereto is genuine, as I verily believe.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court and County, the

James A. Flack
day of _____ 1886.

Deputy Clerk.

Original

L.R.G.

I Henry Brongham Farnie
of No. 95 The Albany Piccadilly in the
County of Middlesex Dramatic Author
do solemnly and sincerely declare that

L.R.G.
L.R.G.
L.R.G.
L.R.G.

1. That no printed libretto of my opera
named "Tal Ra" has ever been published
and was only printed for private use in the London Theatre where
it was produced and that I never authorized its sale by
Messrs. Kington Brothers 41, 43, 45, San Francisco, U.S.A.
And I make this solemn declaration
conscientiously believing the same to
be true and by virtue of the provisions
of an Act made and passed in the fifth
and sixth years of the reign of his late
Majesty King William the Fourth intituled
"An Act to repeal an Act of the present
Session of Parliament intituled "An
Act for the more effectual abolition of
Oaths and Affirmations taken and made
in various departments of the State"
and to substitute declarations in lieu
thereof and for the more entire
suppression of voluntary and extra
judicial oaths and affidavits and to
make other provisions for the abolition
of unnecessary oaths

Declared and Subscribed
at 32 Great Street Strand
in the County of Middlesex
this 11th day of March 1886
Before me

H. B. Farnie.

L. F. E. Spragg

A Commissioner to administer Oaths
in the Supreme Court of Judicature

Deputy Clerk.

✓
Court of Equity,
District of California

EQUITY

Thomas H. French

Joseph Kreling

SUBPOENA.

May 12 1886

L. S. B. SAWYER

A. P. M. M. M. M.

PAGE

1 Circuit Court of the United States South
2 Circuit District of California —
3 — In Equity. —

4
5 Thomas H. French

6 — vs. —

7 Joseph Kreling,
8 John Kreling and
9 William Kreling.
10

11 And now come the above named de-
12 fendants and respondents, and now and at all
13 times hereafter saving to themselves all and all
14 manner of benefit or advantage of execution, or
15 otherwise that can or may be had or taken to
16 the many errors uncertainties and imperfections
17 in said Bill contained, and answering the same
18 or so much thereof as these defendants are advis-
19 ed is material or necessary for them to make
20 answer to, say. —

21 First:

22 These defendants say to
23 their or either of their knowledge or belief, they or
24 either of them do not know and have never been in-
25 formed save by said plaintiffs Bill of complaint and
26 cannot set forth as to their or either of their belief
27 or otherwise whether the said complainant is a cit-
28 izen of the United States, or a resident of the State of
New York. And deny that the complainant is

I hereby Certify, that I received the within writ on the

7th

day of

PAGE

1 the sole proprietor or at all, of a certain Operetta
2 or any Operetta in the English language known
3 as Talka.

4 True defendants as to
5 their or either of their knowledge or belief, they
6 or either of them do not know and have never been
7 informed, save in said plaintiffs bill of complaint,
8 and cannot set forth as to their belief or otherwise,
9 whether one Henry Broadham Tarnie at all or at
10 any time was or now is a resident of London En-
11 gland or the sole author or composer or either of
12 the dialogue or words of
13 the songs of said operetta, or which is an adapta-
14 tion into the English language original or
15 otherwise with said Tarnie.

16 And these defendants
17 deny that the dialogue and words, or either, of
18 the songs of said operetta "Talka" are now and
19 always have been in manuscript or have never
20 at any time been published, printed or in any
21 way dedicated to the public or made in form
22 of publication, but on the contrary said operetta
23 in its entirety including the dialogue, the words
24 of the songs, and music, and every thing appertain-
25 ing to said operetta were published in Book
26 form in the English language by Alfred Hays
27 in the city of London, England, and publicly sold
28 at the places of business of said Alfred Hays at
the city of London, England, and other places.

2 authors of said operetta since the year 1883 and

was entered in the

said city of London, sub-

stantiating that the

the songs

form

by and

these defend-

the

house

San Francisco, State of

ed in their said

and 2d comic, and

among others

published copy of an

operetta known as Talka in its entirety and pro-

duced the same at their said opera house in the

city and county of San Francisco which said oper-

etta was prior to the production thereof, duly de-

scribed to the public as aforesaid

And these defendants

11 into the English language or either of
12 otherwise with said Gamine. —
13 Plaintiff:

14 deny that the dialogue and words or either of
15 songs of said operetta "Tarka" are now and
16 have been in manuscript or have never
17 been published, printed or in any way
18 including the dialogue, the words
19 and every thing appertaining
20 published in Book
21 language by Alfred Hays
22 London, England, and publicly sold
23 of said Alfred Hays at
24 England, and other publications

PAGE
2

1 houses by and with the consent of the composers and
2 authors of said operetta since the year 1883 and
3 said operetta as published was entered in the
4 State Hall, a register in said city of London, sub-
5 sequent to the publication of the same. That the
6 vocal score and songs, and the words of the songs
7 were also published and sold in book form
8 throughout England and the United States by and
9 with the consent of the author, and these defend-
10 ants who have for several years last past been the
11 proprietors of a theatre known as the "Civoli Opera House"
12 in the city and county of San Francisco, State of
13 California, and as such have produced in their said
14 Theatre a large number of operas, Grand Comiques,
15 and these defendants in open market among others
16 purchased a printed and published copy of an
17 operetta known as "Tarka" in its entirety and pro-
18 duced the same at their said opera house in the
19 city and county of San Francisco, which said oper-
20 etta was prior to the production thereof, duly de-
21 dicated to the public as aforesaid. —

22 Defendants:

23 And these defendants
24 say to their or either of their knowledge or
25 belief, they or either of them do not know and
26 have never been informed save by said plaintiffs
27 Bill of complaint and cannot set forth as to
28 their or either of their belief or otherwise whether
the title "Tarka" was or is an original title

I hereby Certify, that I received the within writ on the

7th

day of

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#

1 originated, composed or affixed to the original or any
2 adaptation by the said Tarnie, or never had
3 prior to the composition of said dialogue or words
4 of the songs of the said operetta been used, de-
5 dicated or known in connection with any other
6 dramatic composition of any kind, or that the
7 said title has been well or at all known in
8 connection with its use as a designation or
9 name for the said operetta is originated or com-
10 posed by the said Tarnie, or at all, or as a means of
11 identifying his said work. —

12 Reply:

13 And these defendants
14 say, to their or either of their knowledge or belief
15 they or either of them do not know and have
16 never been informed save by said plaintiffs Bill
17 of complaint, and cannot set forth as to their or
18 either of their belief or otherwise, whether, on the
19 24th day of January 1884, or at all, or after the
20 said dialogue or words of the songs of said oper-
21 etta "Gialta" had been thus or otherwise composed
22 or written, or either, or at all, by said Tarnie,
23 the said Henry Brougham Tarnie being then
24 or at all, the sole owner or proprietor thereof, or
25 either sold, assigned or transferred or set over
26 unto complainant his executors, administrators or
27 assigns to his or their use or benefit, or either or
28 at all, the said dialogue or words of the songs
of the said operetta, or either, or the manuscript

PAGE
5

1 to the same or the produce
2 of said Tarnie, or to the same or the produce
3 of said Tarnie, or to the same or the produce
4 of said Tarnie, or to the same or the produce
5 of said Tarnie, or to the same or the produce
6 of said Tarnie, or to the same or the produce
7 of said Tarnie, or to the same or the produce
8 of said Tarnie, or to the same or the produce
9 of said Tarnie, or to the same or the produce
10 of said Tarnie, or to the same or the produce
11 of said Tarnie, or to the same or the produce
12 of said Tarnie, or to the same or the produce
13 of said Tarnie, or to the same or the produce
14 of said Tarnie, or to the same or the produce
15 of said Tarnie, or to the same or the produce
16 of said Tarnie, or to the same or the produce
17 of said Tarnie, or to the same or the produce
18 of said Tarnie, or to the same or the produce
19 of said Tarnie, or to the same or the produce
20 of said Tarnie, or to the same or the produce
21 of said Tarnie, or to the same or the produce
22 of said Tarnie, or to the same or the produce
23 of said Tarnie, or to the same or the produce
24 of said Tarnie, or to the same or the produce
25 of said Tarnie, or to the same or the produce
26 of said Tarnie, or to the same or the produce
27 of said Tarnie, or to the same or the produce
28 of said Tarnie, or to the same or the produce

And these defendants

said Bill of complaint admit

that the operetta heretofore

was performed at their said opera house for the period

of ten days, beginning on the 4th day of

January 1886, but deny that the same was

performed without the consent or authority of

complainant or any one having the right to

produce or perform the same, or without having paid com-

pendition whatever for the right to produce

the same under the said title "Gialta", or in

any manner using the said dialogue or

11 They or either of them do not know and have
15 never been informed save by said plaintiff but
16 of complaint and cannot set forth as to his or
their names or other particulars of the same
as the sole owner or proprietor thereof, or
the said, assigned or transferred or set over
his executors, administrators or
their use or benefit, or either or
at all, the dialogue or words of the songs
28 of the said operetta, or either, or the manuscript

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5

1 thereof or all, or any the right, title or interest
2 of said Tarnie, in or to the same, or the produc-
3 tion thereof on any stage in the United States,
4 or in or to all, or any profits benefit or advantage
5 that now or might arise from the production
6 of said operetta in the United States, or at all,
7 or either. —

8 Sixth. And these defendants
9 further answering said Bill of complaint admit
10 having produced the operetta heretofore
11 mentioned at their said opera house for the period
12 of twenty-two days, beginning on the 4th day of
13 January 1886; but deny that the same was
14 so produced without the consent or authority of
15 complainant, or any one having the right to
16 grant such authority, or without having paid com-
17 pensation whatsoever for the right to produce
18 the same under the said title "Pailka", or in
19 said production used the said dialogue or
20 words of the songs as composed by said Tarnie
21 and owned by complainant, or at all or either.

22 Seventh. And these defendants
23 deny, that neither said Tarnie nor complainant
24 have ever assented to, or acquiesced in the public
25 representation of the said operetta by these defend-
26 ants, nor by anyone not specially licensed to
27 represent the same but on the contrary the said
28 operetta was printed, published and dedicated to the

United States Marshal's Office,
DISTRICT OF CALIFORNIA

I hereby Certify, that I received the within writ on the

day of

7th

PAGE

1 Public long prior to the alleged transfer to com-
2 plaintant as aforesaid; and these defendants say to
3 their or either of their knowledge or belief, they
4 or either of them do not know and have never
5 been informed save by said plaintiff's Bill of complaint
6 and cannot set forth as to their or either of their belief or
7 otherwise, whether the authorship of said opera has
8 been frequently, or at all, quoted in the different
9 or any newspapers or channels of communication
10 specially or otherwise or at all devoted to the
11 national matters or news, or either or at all, or
12 has been or is, well known or otherwise, or at all
13 or recognized throughout the United States; as attach-
14 ed to said complaint marked "Exhibit A" is the af-
15 fidant of the author, or pretended or alleged
16 author to above, or any effect. —

17 — And these defendants deny all in all
18 manner of unlawful combination and confeder-
19 acy wherewith they are by the said Bill charg-
20 ed without true, that there is any other matter,
21 cause, or thing in the said complaint's said
22 Bill of complaint contained, material or neces-
23 sary for these defendants to make answer unto,
24 and not herein and hereby well and
25 sufficiently answered, confessed, traversed, and
26 avoided or denied, is true to the knowledge or
27 belief of these defendants; all of which matters
28 and things these defendants do ready and

PAGE

1 willing to aver, maintain and prove as
2 Honorable Court shall direct; and humbly pray
3 us to be heard with their reasonable
4 Costs and in this behalf most wrong-

Lowenthal

for respondent

San Francisco

California

County of San Francisco

Joseph Breiling, John
William Breiling being severally duly
sworn, depose and say, that

the defendants and respondents herein;

the foregoing answer to com-
plaint is true and correct and the contents
of said complaint do not know the contents
of said complaint do not know the contents

15 "said complaint marked 'Exhibit A' is the af-
 16 "fiant of the author, or pretended or alleged
 17 "author to avenge or any effect.
 18 "And these defendants deny all and
 19 "manner of unlawful combination and confeder-
 20 "acy with which they are by the said Bill charged,
 21 "and further that there is any other matter,
 22 "cause, or thing in the said complaint, said
 23 "Bill of complaint contained, material or neces-
 24 "sary for these defendants to make answer unto,
 25 "and not herein and hereby well and
 26 "sufficiently answered, confessed, traversed, and
 27 "advised or denied, is true to the knowledge or
 28 "belief of these defendants; all of which matters
 and things these defendants

PAGE

1 "witness to aver, maintain and prove as this
 2 "honorable court shall direct; and humbly pray
 3 "to be here dismissed with their reasonable
 4 "costs and charges, in this behalf most wrong-
 5 "fully sustained.

H. K. Lowenthal.

Solicitor for Respondent.

United States of America.

State of California.

ss

City and County of San Francisco.

14 — Joseph Kreling, John
 15 Kreling and William Kreling being severally duly
 16 sworn, each for himself doth depose and say; that
 17 he is one of the defendants and Respondents herein;
 18 that he has read the foregoing answer to com-
 19 plainant's Bill of complaint and knows the contents
 20 thereof; that the same is true of his own knowledge,
 21 except as to the matters therein stated to be al-
 22 leged on information and belief, and as to those mat-
 23 ters he believes it to be true —

24 Sworn to before me, this
 25 1st day of July 1881.

25 Joseph Kreling,
 26 John Kreling
 27 William Kreling

27 Charles H. Wood
 28 Notary Public

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT,
NORTHERN DISTRICT OF CALIFORNIA.

THOMAS H. FRENCH

Complainant

VS

JOSEPH KRELLING, et al.,

Defendants.

IN EQUITY.

No. 4035

FINAL DECREE

PRESENT, the HONORABLE

Joseph M. McKenna
U.S. Circuit Judge

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California held at the City of San Francisco, on the 29th day of August in the year of our Lord, one thousand eight hundred and ninety-four.

The Court having on the 13th day of August, 1894, rendered its decision in favor of the complainant, calling for a decree which includes an accounting and injunction and costs; and an accounting and costs having been settled and paid by the defendants to the complainant, in the total sum of Two hundred and fifty (\$250) Dollars, in full for all demands against the defendants, their administrators, executors, successors and assigns, for the costs of this suit, and for the proceeds due the complainant for all performances of the said opera of "FALKA" given prior to August 27, 1894; and the respective parties hereto and

their solicitors having stipulated that a decree shall forthwith be *Entered* in favor of the complainant and against the defendants their administrators, successors, executors and assigns, perpetually enjoining them from producing the opera "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents;

Thereupon upon consideration thereof, it is ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree as follows, to wit:

That Thomas H. French of the City, County and State of New York, the complainant herein, was at the commencement of this suit, and still is, the sole owner and proprietor of a certain opera or operetta in the English language known as "FALKA";

And it is further ordered, adjudged and decreed that the defendants, their administrators, successors, executors and assigns be and they are hereby perpetually enjoined from producing the said opera of "FALKA" or any version thereof belonging to the complainant at any time and place and forever, without the written consent of the complainant or his agents.

Joseph H. McKenna
Circuit Judge.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY

RESEARCH REPORT

W. H. RHEIN, JR., and J. H. RHEIN

Department of Chemistry, University of Chicago

ABSTRACT

The reaction of the diethyl malonate with the diethyl malonate
has been studied for the purpose of determining the rate of reaction.

RECEIVED JANUARY 1, 1954

INTRODUCTION

The reaction of the diethyl malonate with the diethyl malonate
has been studied for the purpose of determining the rate of reaction.
The reaction is of the type $A + B \rightarrow C$ and the rate of reaction
is determined by the concentration of the reactants and the temperature.

The reaction is of the type $A + B \rightarrow C$ and the rate of reaction

is determined by the concentration of the reactants and the temperature.

The reaction is of the type $A + B \rightarrow C$ and the rate of reaction

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is determined by the concentration of the reactants and the temperature.

The reaction is of the type $A + B \rightarrow C$ and the rate of reaction

is determined by the concentration of the reactants and the temperature.

This bill is in equity to compel respondents to account for the receipts of the Tivoli Opera House at which the operetta of "Faust" was performed, and for other and further equitable relief.

From the testimony taken on behalf of complainant it appears that he is the owner of said operetta; that the drama is that of Gauthier, England, and the author of the music of the dialogue and words of the songs of said operetta, and that it was by him made into the English form the present original entitled "My Little D'Alphonse," that it is an entirely original work; that from the middle of the second act to the end of the third act the plot and situations are entirely original; that four of the characters and all the situations and dialogue appertaining to the characters were the creation of complainant; that the entire English dialogue of "Faust" is original; that the title "Faust" is an original title applied to a drama; that prior to the composition of the dialogue words and songs the said operetta had never been used in connection with any other composition or characters; that the music was written by Ernest Ingham; that the operetta consists of a libretto in three acts and a musical score; that the dialogue, songs, and musical score, heretofore have never been published; that the musical score, and the dialogue, libretto and songs heretofore have never been published; that if any copy of said unpublished libretto, songs or music come into the possession of respondents, such copy was obtained by illegal means; that the authorship of said operetta has been entered in the Copyright Office and has been registered throughout the United States; that royalties have been

but the defendant testified with the utmost sincerity
and truthfulness. The first issue submitted to the court in
is *Goldberg v. Goldberg*, 13 S.W.2d 111; *Goldberg v. Goldberg*,
13 S.W.2d 111, and in *Goldberg v. Goldberg*, 13 S.W.2d 111, 116
are conclusive in favor of defendant's right to a divorce with
children.

Very respectfully,
[Signature]

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT
NORTHERN DISTRICT OF CALIFORNIA.

T. H. F R E M C H

Plaintiff

VS

No. 4,035
IN EQUITY.

JOSEPH KRELING, et al

Defendants

S T I P U L A T I O N
FOR DECREE AND SETTLEMENT OF CASE.

-----000-----

WHEREAS---In the above entitled action, the Court
did on the *Thirteenth* 3^d day of August, 1894, render its
decision in favor of the plaintiff, calling for a decree
which includes an accounting and injunction and costs, and

WHEREAS, it is the desire of the parties to this ac-
tion and their solicitors to settle this case and end this
litigation---

NOW THEREFORE-- it is stipulated by and between
the respective parties hereto and their solicitors, that
a decree shall forthwith be entered in favor of the
plaintiff and against the defendants their, administre-
tors, successors, executors and assigns, perpetually en-
joining them from producing the opera of "FALKA" or any
version thereof belonging to the plaintiff, at any time
and place and forever, without the written consent of

the plaintiff or his agents and it is furthermore stipulated that in said decree there shall be recited an accounting and costs as having been settled and paid by the defendants to the plaintiff in the total sum of Two hundred and fifty (\$250) Dollars in full for all demands against the defendants their administrators, executors, successors and assigns for the costs of this suit and for the proceeds due the plaintiff for all performances of the said opera of "FALKA", given prior to the date of the signing hereof. It is furthermore stipulated that this stipulation shall be filed in this cause and in said Court and a decree in favor of the plaintiff and in conformity with the terms of the stipulation may be entered.

Joseph A. Rabin
Solicitor for Plaintiff

H. H. Kowalchak
Solicitor for Defendants

Dated, August 27th, 1894.

In the Circuit Court of the United States for the Ninth Judicial Circuit,
in and for the District of California

D. H. Finck,

Complainant,

vs.

An Equity No 2035

Joseph Harding et al

Respondent

Be it Remembered, that,
on the 11th day of January, A D 1888, and on
the several days thereafter to which the examination was regularly
adjourned, as hereinafter set forth, at my Office, Room 57, in the United
States Appraisers' Building, on the north-east corner of Washington and
Sansom Streets, in the City and County of San Francisco, State of
California, before me,

S. C. Doughton, Examiner in Chancery,

of the Circuit Court of the United States for the Ninth Circuit and District
of California, personally appeared the several witnesses whose names are
hereinafter set forth, who were produced and examined on behalf of the
respective parties to the above-entitled cause

J. Harding, Esq.
appeared as counsel on behalf of Complainant, and

D. H. Finck, Esq.
as counsel on behalf of Respondent

Following is a record of the proceedings.

Saturday, January 5th, 1888.

Present: Mr. REYNOLDS, of counsel for complainant;
Mr. LOWENTHAL, of counsel for respondent.

It is admitted by both complainant and respondent, as facts, that Joseph Krelling, one of the respondents herein, died after the commencement of this suit, and after service of process therein upon him; and that his wife was duly appointed and served as executrix, and has been discharged from her duties as such executrix.

EXAMINATION-IN-CHIEF

of

CHARLES H. FYKE

On behalf of respondent.

Q.1 (By Mr. LOWENTHAL) State your name, age, place of residence and occupation.

A. My name is Charles H. Pyke, my age forty-one years, I reside in San Francisco at present, and am by occupation a theatrical ~~XXXXXX~~ stage manager.

Q.2 Mr. Pyke, you are a theatrical manager, and have been so for how many years?

A. About five or six years. Yes, sir, it years, possibly.

Q.3 And are you a professional gentleman also, so far as acting is concerned?

A. Yes, sir.

Q.4 And have been so for how long?

A. Ten years.

Q.5 Played leading roles in opera, have you not?

A. Yes, sir.

A. Yes, sir.

Q.7 Have you ever seen a production of "Falka"?

A. Yes, sir; I have.

Q.8 Have you ever taken any part in it, yourself, at any time?

A. No, sir; I have not.

Q.9 Have you ever seen this book attached to the propositions taken in this case in London, marked "Respondent's Exhibit 1", before to day, and if so, state what it is.

A. Yes, sir; I have seen it before to day. It is the libretto of the opera of "Falka", the acting edition.

Q.10 In its entirety?

A. Yes, sir.

Q.11 Who is the composer of that opera as appears on the title page?

A. F. Massalme.

Q.12 The book that I have shown you, "Exhibit 1", is a printed copy of the libretto of "Falka", is it? A. Yes, sir.

Q.13 You say you have seen the opera produced?

A. Yes, sir; I saw it produced.

Q.14 Where?

A. In New York.

Q.15 You know the characters? A. Yes, sir; pretty well.

Q.16 Do you know the production who took part in the production of any of the characters?

A. Yes, sir; I know most all of them. In fact I think I know them all. Of course I was at that time in New York.

CHARLES W. PYKE.

Q. (By Mr. REELING.) At what theatre in New York did you see this opera performed?

A. At the Casino.

Q.2 And where at the German Theatre?

A. No, sir; I didn't see it at the German Theatre.

Q.3 What year was it that you saw it at the Casino?

A. It must have been about six years ago---between five and six years ago.

Q.4 Let me refresh your memory by stating the fact that the opera was written by Chas. Gounod and Farnie somewhere in 1883, and first produced in this country in 1893---that would be about six years ago.

A. Yes, sir; that is what I thought.

Q.5 That is, the first part of 1884, or the latter part of 1883?

A. Yes, sir.

Q.6 Who were the proprietors of that theatre, the Casino?

A. McCall and others.

Q.7 Do you know who McCall deals with in getting these operas from Europe?

(Question objected to by respondent, as entirely incompetent and immaterial, and not proper cross examination.)

A. Well, he deals with different people.

Q.8 Can you give me any opinion as to who Mr. McCall got the opera of "Falka" from in Europe?

(Question objected to by respondent, as incompetent, immaterial and irrelevant, and not proper cross examination.)

tion.)

Q9 State what you know, or the best of your recollection.

A. I know that Mr. McCall, who produced this opera originally, didn't only get operas from one source, but many; and I don't know the particular source through which he got this opera of "Falka". It is nothing that I could swear to.

Q.10 Well, to the best of your information, have you any idea or recollection? That is to say, what I desire to ascertain is, from your knowledge of these things in general, do you know the method by which Mr. McCall gets these operas from abroad? Is it not a fact that he enters into contracts with foreign authors, composers and agents, for these operas, and pays a royalty for them?

(Question objected to by respondent, as being improper, immaterial and irrelevant, and not proper cross examination.)

A. Well, I know that Mr. McCall pays a royalty, and sometimes buys an opera right out; and I know that there are plenty of operas that he has produced that he has neither paid a royalty for, or bought.

Q.11 You have paid a royalty, yourself, for operas?

(The same objections by respondent.)

A. Yes, sir.

Q.12 Do you know what business Mr. C. Henry French is in?
A. He is in the publishing business in New York.

Q.13 Does he not also have an agency for operas written abroad, and upon which he charges a royalty for the production

here in America?

A. That I am hardly prepared to answer, any more than that I have heard his name mentioned in connection with this opera of "Falka".

Q.14 Have you ever paid him any royalty for operas at all?

A. No, sir; never.

Q.15 You never saw this opera produced anywhere except at the Casino in New York, did you?

A. No, sir.

Q.16 You never saw it produced by what they call "snag" companies on the road?

A. No, sir; I never have.

Q.17 Is the opera of "Falka" a success?

A. Yes, sir; it was at that time.

Q.18 Was that the opera that Ricci was in? A. Yes, sir.

Q.19 And as to that tall comedian---I don't know his name?

A. Hopper, do you mean? He wasn't in it.

(Question objected to by respondent, as entirely irrelevant.)

Mr. DUDLEY: I desire to state this: that the evidence shows, and the exhibits show to the witness show, that this opera was produced at the Casino under a license from the defendant herein, and that these people took part in that production, and that this was the performance that this witness saw.

Q.20 (By Mr. LOWMEYER.) I believe you stated here that Mr. Farnie wrote the opera of "Falka". He is not the composer of this opera, is he?

A. Farnie is the writer, and Chausson is the composer.

(It is stipulated and agreed, by and between counsel for the respective parties herein, that the reading of the above deposition to the witness, and the signing of the same by him, and all of the depositions of the witnesses hereinafter to be taken, are waived.)

EXAMINATION-IN-CHIEF

of

WILLIAM KRELLING

On behalf of respondent.

Q.1 (By Mr. FOWLER CHASE.) State your name, age, place of residence and occupation.

A. My name is William Krelling, my age is thirty-eight years, I reside in San Francisco, and I am by occupation the proprietor and manager of the Tivoli Opera House in this city.

Q.2 You are one of the respondents in this suit?

A. Yes, sir.

Q.3 Do you recollect, Mr. Krelling, of the production of the opera "Falca" at your theatre, at the Tivoli Opera House?

A. I do.

Q.4 Do you recollect who wrote the orchestration for the opera?

A. Yes, sir.

Q.5 Who did?

A. George Koppitz.

(It is agreed by both plaintiff and respondent, that the orchestration of the opera "Falca", as produced at the Tivoli Theatre, was made by George Koppitz from the piano score of the composer.)

Q.6 Have you seen the piano-forte score of the opera "Falka"?

MR. REDDING: I object to the question, as being improper, irrelevant, and not the best method of showing what the witness has seen; and further, that if any piano-forte score of the opera "Falka" has been published, and used by respondents, the same should be produced, instead of asking the recollection of the witness as to what he may have seen.

(It is stipulated and agreed by both complainant and respondent, that the above objection may be considered as having been interposed to any question relating to the same subject matter.)

A. I have.

Q.7 By whom was that piano-forte score purchased for the Tivoli Theatre? Did you have it in your possession at the Tivoli Theatre?

A. Yes, sir; we have had it there a long time.

Q.8 Where did you get it?

A. We bought it in the music store.

Q.9 Was it arranged for you? A. Yes, sir.

Q.10 The music, and words of the songs? A. Yes, sir.

Q.11 When the Tivoli Opera House, or its manager, purchased the piano-forte score containing the music and the words of the songs of that opera "Falka", what was the mode that you followed with relation to arranging that piano-forte score that you did follow, in this case, for the purpose of

the orchestration and the production of the opera "Falka" at the Tivoli Opera House?

A. We gave it to Mr. George Koppitz to arrange for us.

Q.12 The piano-forte score contains simply the music for the piano, doesn't it, and the words of the songs of the opera?

A. Yes, sir.

Q.13 Did the piano-forte score that was purchased for the production of the opera "Falka", as you have testified to, contain the entire music of "Falka", and the words of the songs?

A. Certainly.

Q.14 And you say that that piano-forte score as purchased by you for that purpose was delivered to whom to arrange it for the orchestra?

A. Mr. George Koppitz.

Q.15 Do you recollect seeing this book which is attached to the propositions taken herein in London, and which is marked "Regiment's Exhibit 1", in your establishment?

A. Yes, sir.

Q.16 Prior to the time of the production of the opera "Falka"?

A. Yes, sir.

Q.17 Whose property was that book at the time?

A. It was ours.

Q.18 How did you become possessed of that book, if you can recollect?

A. We purchased it from the music dealers.

Q.19 And that book containing the libretto of the opera "Falka", doesn't it?

A. Yes, sir; that is the libretto.

CROSS-EXAMINATION

of

WILLIAM KRELLING.

Q.1 (By Mr. ADDIN.) You are still connected with the Tivoli Opera House, are you? A. Yes, sir.

Q.2 You have succeeded to the business that was under the control of Joseph Krelling, John Krelling and William Krelling at the time this suit was brought, have you?

A. Yes, sir.

Q.3 And you are carrying on the same business in the same place? A. Yes, sir.

Q.4 Do you know how long the opera "Falke" was produced at your theatre? A. About three years ago.

Q.5 And for how long a period?

A. Four weeks, I believe.

Q.6 Will you produce upon the accounting in this case, shall I therefore at accounting, your books, and show when you played this opera? A. Yes, sir.

Q.7 And now I want to ask you, were there any other operas played at the same time? A. Yes, sir.

Q.8 Did you ever see any correspondence with Mr. Farnie or Mr. Cassaigne, the writer and composer of this opera "Falke", before you bought those various books upon which you produced this opera?

Mr. TOWNSHIPAL: I object to the question, on the ground that it assumes that Mr. Farnie and Mr. Cassaigne are the writer and composer of this opera "Falke"; and

Further, that it is not proper cross examination.

A. I don't think so.

Q.9 Have you ever paid any royalty to Chas. Farnie, or to Farnie?

(The same objection by respondent.)

A. No, sir.

Q.10 Do you know whether the books or publications, or anything that you have bought for the purpose of producing this opera of "Falke", were published with the consent of Chas. Farnie or Farnie, or their representatives?

A. I don't know anything about that.

Q.11 Did you ever pay any royalty to anybody for the production of this opera of "Falke"?

(The same objection by respondent.)

A. No, sir.

~~Q.12~~

(It is admitted by the complainant and respondent herein, as a fact, that the libretto attached to the propositions taken over in London, marked "Respondent's Exhibit 1", is the original libretto for which the opera of "Falke" was produced by the respondents.)

Q.12 Where did you get this book from, that is attached to the propositions taken over in London, and marked "Respondent's Exhibit 1"?

A. This book was bought in New York.

Q.13 By whom, for you?

A. Oh, it was bought for by my brother Joseph, to the publisher.

Q.14 You say this book was printed in New York?

A. No, sir; it was bought there.

Q.15 Do you certify that this book was bought at Dittell's in New York?

A. I think it was Dittell's, but I am not positive; I can't remember it was bought from; but I knew it came from New York.

Q.16 To whom did you write for this book?

A. We have standing orders in all the music stores there.

Q.17 Did you read this book before you purchased it?

A. Yes, sir.

Q.18 Did you read the title page?

A. Yes, sir.

Q.19 Did you read the copyright notice: "Right of reproduction reserved"?

A. Yes, sir.

Q.20 Did you also read it over the second time, "Right of reproduction and reproduction reserved"?

A. Yes, sir.

Q.21 And you were fully aware, that sentence and when in the book, that you bought it?

A. Yes, sir; certainly.

Q.22 You certify, then, that you did not copy or orchestration from the piano-forte score?

A. Yes, sir; we made it.

Q.23 You didn't give any royalty for the orchestration?

A. No, sir. We paid him a stipulated sum for orchestrating the piano-forte score.

Q.24 Is it true, then, that you made your own orchestration from the piano-forte score?

A. Yes, sir.

Q.2 You made your own investigation for "Hanon"?

A. Yes, sir.

Q.20 You didn't remember just when you got the letter
of the office of "Felt", from New York?

A. I don't know the date of the letter. I don't
tell you. There is no date on the letter. I
corroborate with.

Q.27 Now, the Court has asked you to, Mr.
Krelling, to look that up in the "Hanon" to the
"Hanon's Exhibit 1". It is stated to the positions
taken in the opinion, occurs these words written in: "The
property of F. J. McGee". Presented to him by E. T. Starn.
Company, London, England". Do you know that and
what it is?

A. No, sir.

Q.28 Do you know whether that was written in the "Hanon"
or it, or otherwise?

A. No, sir; I don't know.

Q.29 (By Mr. JOHNSON) Your brother Joseph Krelling
died about how long ago?

A. A year and a half ago.

Q.30 At that time the firm of Krelling Brothers was
dissolved, wasn't it?

A. Yes, sir.

Q.31 That is, the firm composed of John Krelling, Wil-
liam Krelling and Joseph Krelling was then dissolved?

A. Yes, sir.

Q.32 Now there is a new firm of proprietors, or so they

Monday, January 22nd, 1889.

Present: Mr. LOWENTHAL, of counsel for respondent;

(At the request, by telephone, of Mr. Redding, of counsel for complainant, the examination is further continued, subject to notice and agreement.)

Wednesday, February 20th, 1889.

Present: Mr. ALAMS, appearance for Mr. REDDING, of counsel for complainant;

Mr. LOWENTHAL, of counsel for respondent.

Mr. LOMER, a witness.

(Examination continued, in conformity with agreement of counsel, until Saturday, February 23rd, 1889, at half past ten o'clock A. M.)

Saturday, February 23rd, 1889.

Present: Mr. REDDING, of counsel for complainant;

Mr. LOWENTHAL, of counsel for respondent.

EXAMINATION-IN-CHIEF

of

ERNEST LOMER.

On behalf of respondent.

Q.1 (By Mr. LOWENTHAL.) State your name, age, place of residence, and Occupation?

A. My name is Ernest Lomer, my age thirty-one years, I

reside in San Francisco, and I am by occupation the manager of the Matthias Gray Company.

Q.2 (BY Mr. REDDING.) That is a corporation now?

A. That is a corporation now.

Q.3 By Mr. LOWENTHAL.) How long have you been connected with the Matthias Gray Company?

A. For the last nine years.

Q.4 What position do you occupy there? A. Manager.

Q.5 As such manager of that firm or corporation, did you become acquainted with the Krelling Brothers, proprietors of the Tivoli Opera House? A. I did, yes, sir.

Q.6 Did they give you dealings with the firm that you represent as its manager, with relation to the purchase of scores of operettos? A. Yes, sir.

Q.7 Do you know of an operetta known as "Falka"?

A. I do.

Q.8 Have you or have you now in your store any orchestration of the opera "Falka", if you know?

A. Well, no orchestration of it; we have the vocal scores.

Q.9 Do you recollect selling to the Krelling Brothers the vocal scores of the opera "Falka"? A. Yes, sir.

Q.10 Is the vocal score on sale in your store?

A. Yes, sir.

Q.11 So that any person may purchase the same?

A. Any one.

Q.12 And was it so in the years 1885 and 1886; that is, two or three years ago?

A. Yes, sir; I think it was. I could not tell you positively--1886, certainly; but I don't know about the dates. Now, of course, I forget. I can tell by referring to the books. I know it published before they played it at the Tivoli.

Q.13 You know that as a fact? A. Yes, sir.

Q.14 In book form? A. Yes, in book form; because they studied it from those books.

Q.15 Can you recollect how many copies of the vocal score were purchased at that time by the Krelling Brothers?

A. I suppose about twenty; that is what they generally buy.

Q.16 They are purchased invariably, and were purchased at that time, as I understand, with a view of permitting the members of the company to study for the production of the opera?

(Question objected to by complainant, as leading, and withdrawn.)

Q.17 At the time of the purchase of the vocal score, as you have testified, you say that about twenty were purchased by the Krelling Brothers?

A. Yes, sir; I think that was about the number.

Q.18 Do you know the purpose for which they were purchased? A. For the purpose of representation.

Q.19 And what use were they put to by the company?

(Question objected to by complainant, as leading, and withdrawn.)

Q.20 What use were they put to by the company?

A. To study their parts.

Q.21 What use was the vocal score put to?

"Respondent's Exhibit 2".)

Q.27 Is the vocal score and music of that opera printed and published and sold in the open market, and has it been so printed, published, and sold prior to the time of the production of this play at the Tivoli?

A. Yes, sir.

Q.28 And is that vocal score or music of the opera "Falka", together with the words of the songs, indiscriminately sold in the market throughout the United States, as far as you know?

A. As far as I know; yes, sir.

Q.29 Have you indiscriminately sold it throughout this city?

A. Yes, sir.

CROSS-EXAMINATION

of

ERNEST LOYER.

Q.1 (BY Mr. REDDING.) You have what is called the piano-fort, copies, or vocal scores, of a great many operas for sale. Have you not?

A. Yes, sir.

Q.2 You have the vocal score of the opera "Nanon" for sale, have you not?

A. Yes, sir.

Q.3 And I suppose most all of the German operas and Viennese operas that we are familiar with, by Millocker and Strauss?

A. Yes, sir.

Q.4 What did I understand you to say that the vocal score contained? You spoke of the piano-fort score and vocal score as the same thing. It contains the piano-fort score of the music and songs?

A. Yes, sir.

Q.5 It doesn't contain any libretto? A. No, sir.

Q.6 You have said that the book "Respondent's Exhibit 2" which you have spoken of contained a great deal of the dialogue, and the song-words?

A. Yes, sir.

Q.7 Will you identify for me of the dialogue contained in the book "Exhibit 2"? Show me one word of spoken dialogue unaccompanied with the music, and not in the body of a musical number, in the book "Exhibit 2".

A. Well, here, for instance, on page twenty-five, is portions. That is in Act II; "Good heavens; is this all true? Yes; come brother-in-law, come. No, no; I am your nephew, save me."

Q.8 That occurs, doesn't it, on page twenty-five, near the close of Act II?

A. Yes, sir.

(At the request of counsel for complainant, the page above referred to is here inserted:

"For obloquy and scorn I ran,

To save my love ('twas only human;)

But woe, I fear 'd to be a man,

I never was the loss a woman.

Fol. (stiffly.) That will do.

Fol. } (falling on knees) Pity, I pray!

Ar. }

Fol. Just seize the youthful beauty.

And murder in trust.

Ther. (robustly) Oh joy! oh rapture!

Fol. }

Bel. }

Ed. }

Ed. My brother, 'tis he!

At last my husband is here. (lays hold of Tancréd.

Tan. Me? You? No, no!

Ed. Ah, those sweet accents!

All doubt at length is past!

Fol. (spoken) Good heavens! is this all true?

Bol. (spoken) Yes! Come brother-in-law, come!

Tan. (spoken) No, no. I am your nephew, save me.

Fol. (to Fol.) Then who are you?

Fol. Your niece!

Fol. Oh! I am going mad!

Ensemble and Chorus.

Sol. To the greenwood, to the greenwood.

Ed.

Come, oh come with me!

Let us linger, let us linger,

Under the forest tree.

Tra la la, tra la la!

Cho. To the greenwood, &c.

END OF ACT II."

Q.9 It is between those two sets of song-words that
you say the dialogue occurs? A. Yes, sir.

Q.10 Can you find in the book "Exhibit 2" any other
portion of dialogue? A. Yes, sir; on page 15.

Q.11 What occurs on page 15?

A. "A letter for me? Ah! it is from the convent! I
recognize the Lady Superior's hand".

(At the request of counsel for complainant, the page 15
above referred to is here inserted:

I am my noble uncle's heir

Henceforth to be his pride and joy,

For a girl he don't much care,

Oh no, a girl's not worth a boy.

Chor.

He is his noble uncle's heir, &c.

II

Fal.

Of my dear uncle's daring

In fields as yet unfought;

His fire, his warlike bearing,

Of these I have been taught.

And these facts think I rich on,

Heritage past all price;

Thus on my proud escutcheon

Bear I for sole device.

I am my noble uncle's heir, &c.

Enter Peasant with letter.

Jan.

My lord, a letter!

(Aside) Petition from some debtor.

Fal. (spoken) A letter for me? Ah! it is from the convent! I recognize the lady Superior's hand.

(opens it)

Fal. (spoken) From the convent. I don't like that at all.

Fal. (spoken) Good heavens! what do I read!--

Fal. (to Falstaff) Your sister's eloped!

QUINTET "R."

Fal. Eloped? My sister has eloped?

Fal. Not a doubt!--not a doubt!

Now I read yourself and find her out.

Cho. Let's spread ourselves and find her out.

Pol. That is useless quite.

Cho. Who's the ~~whisk~~ holy man?

Jan. Pelican, Pelican!

Pol. All will own I am right.

(showing Palka's robe) Now what is this I show? "

Q.12 Now, in each of these instances can you testify whether or not music is being played by the orchestra at the same time? A. That I couldn't tell you.

Q.13 Do you know whether the vocal score or piano-forte score contains what we know as sustained chords, or monotonies, anything, is a dialogue of which you speak?

A. No, sir; I couldn't tell you.

Q.14 Can you produce before the Examiner a copy of the vocal score similar to the one which you sold to the Tivoli people? A. Yes, sir.

Q.15 Will you do so on next Saturday? A. Yes, sir.

Q.16 Do you find occurring in the book "Exhibit 2" any other dialogue?

A. I never looked in the book until I looked at it just now.

Q.17 Didn't you state that there was a good deal of dialogue in this book, "Exhibit 2"?

A. That is my recollection of the book, because a good deal of it looks like dialogue.

Q.18 You said it contained the dialogue?

A. I didn't say it.

(Q.23, on examination-in-chief, and answer thereto (read))

Q.19 You mean, you didn't intend to say it?

A. Well, I know I didn't.

Q.20 Just state what this book, "Exhibit 2", does contain?
A. What I said was, some of the dialogue, and the words of the songs.

Q.21 You don't know whether this dialogue is incorporated in a musical number or not, do you?

A. No, sir; I couldn't state what. I never paid any attention to these things myself.

Q.22 Are you familiar with the cover of this book "Exhibit 2" at all? It says it is published by "Alfred Hays, 4, Royal Exchange Buildings".
A. Yes, sir.

Q.23 Read what it says at the bottom of the title page.
A. "Right of Representation and Reproduction reserved. Entered at Stationers' Hall."

Q.24 Is it possible to find out anything else in the book "Exhibit 2" such as you call dialogue, besides what which you have mentioned?

A. There is a line here on page 17, "What a funny girl!" That is dialogue---that is spoken.

Q.25 How do you know it is dialogue?

A. Because it says here "spoken".

Q.26 Do you know whether or not it is in the midst of a musical number?
A. I couldn't tell you.

Q.27 What occurs immediately before it?

Mr. LOWENTHAL: I object to that, on the ground that the book upon its face shows what occurs immediately

prior to what is spoken, and the latter is the best evidence in that respect.

Q.29 What are the words immediately before it, on page 17; is there not a song being sung on the line before it; are there not song-words on the line before it?

Mr. LOWENTHAL: We object to that, on the ground that it is not relevant for itself, and is therefore the best evidence.

A. I think so.

Q.30 And are there not song-words on the next line after it? A. There is a chorus after it.

Q.31 You will bring next Saturday, will you, and produce the score? A. Yes, sir.

Q.32 Are these which you have mentioned the only instances of spoken words that you find in that pamphlet "Exhibit 2"?

A. Yes, sir; I think they are all.

Q.33 What is this book I have in my hand here?

A. That is the vocal score of the opera "Falka".

Q.34 What does it contain?

A. It contains the music and the words of the songs.

Q.35 Is that similar to the one sold to the Tivoli people upon which they produced the opera "Falka"? A. Yes, sir.

Q.36 Is that the one sold by you to them?

A. Yes, or one exactly like it.

(It is stipulated and agreed by counsel for the respective parties herein, that the copy of the piano-forte score of the opera "Falka" above referred to, may be in-

produced in evidence by complainant, and withdrawn upon the substitution in place of a proof of a fac-simile copy.

Marked "Complainant's Exhibit A".)

Q.36 You can read music, can you? A. Yes, sir.

Mr. LOWE: The object of the introduction in evidence of the piano-forte score, "Complainant's Exhibit A", is to show that it is already admitted in the evidence in this case that the vocal score and songs of the opera, together with the words of the song, have been published and indiscriminately sold in the market; and on that point, I contend that it will lumber up the record.

Q.37 The first illustration of dialogue, Mr. Lowler, that I pointed out, was on page 25 of this pamphlet, "Exhibit 2"? A. Yes, sir.

Q.38 And that occurs at the end of Act II? A. Yes, sir.

Q.39 I ask you whether this book "Exhibit 2" is not a reduction of all the words, without the music, of the vocal score?

A. I can't tell that without examination.

Q.40 I ask you whether the words are virtually the same; the words, "Good heavens; is this all true? Yes; come, brother-in-law, come. No, no. I am your nephew, save me", occur at the end of Act II?

A. Yes, sir.

Q.41 Is this the same position on page 180 of the vocal score, as introduced?

A. The position is the same, but the words are entirely different.

Q.42 In the position in which it occurs in the piano-

forte score is in the way of music. Is there not a tremolo chord to the octave B natural?

A. Yes, sir.

Q.43 Is that sustained during all of that position?

A. You can only tell that by reading the dialogue, because it says here, "spoken on tremolo"; but the way it is printed here, you couldn't ever tell that.

Q.44 Is not that music carried on during the speaking of the words; is not that chord sustained through the speaking of the words, on page 160 of the piano-forte score?

(Question objected to by respondent, as leading, and not proper cross-examination.)

A. I can only tell that from the printed instructions; the music does not show it.

Q.45 Is there any stopping in the music there? Does the music stop according to the marks there?

A. No, sir.

Q.46 Is there any rest there?

A. No, sir.

Q.47 The music continues to play?

A. Yes, sir; the music continues to play.

Q.48 On page 1 of "Exhibit 2" was the second illustration given by you of the dialogue. The words that you said were spoken are as follows: "A letter for me? Ah! it is from the convent. I recognize the Lady Superior's hand. From the convent! I don't like that at all. Good heavens! what do I read". Those are the words you said were spoken? A. Yes, sir.

Q.49 Are not the same words exactly found on page 60 of the vocal score: "A letter for me? Ah, it is from the convent—I recognize the Lady Superior's hand. From the convent? I don't like that at all! Good heavens! What do I read".

A. Yes, sir.

Q.50 Is the music being played, according to the vocal score and piano-forte score on page 60, while those words are being spoken? A. Yes, sir; what we call melo-dramatic music.

Q.51 And that continues all through those spoken words?

A. Yes, sir.

Q.52 On page 17 of "Exhibit 2" you said was some more dialogue, at the opening of Act II: "Maids. What a funny girl!" Do the same words occur on page 88 of the vocal score, "What a funny girl"?

A. Yes, sir.

Q.53 Is not music being played at the same time?

A. I could not tell. I wouldn't take it to be.

Q.54 You say you read music, do you? A. Yes, sir.

Q.55 What key is that in, the third bar on page 88?

A. I don't know.

Q.56 And yet you say you read music? A. Yes, sir.

Q.57 You know flats from sharps? A. Yes, sir.

Q.58 How many flats are there there? A. Four.

Q.59 Is that a treble clef? A. Yes, sir.

Q.60 And is that a bass clef? A. Yes, sir.

Q.61 What note is that on the "F" line of the second bar on that page? A. F.

Mr. LOWENTHAL: I object to this entire line of testimony, on the ground that it is an attempt to bolster up the records; that it is not proper cross-examination; the witness having been called in for the complaint, it

is entirely immaterial and irrelevant to this issue; and we ask that the whole of this evidence be stricken out on that ground.

Q.62 You find a pause when you see it, do you not?
A. Yes, sir.

Q.63 Do you find any pause in the music of the second bar on page 88?
A. I find an eighth rest in the first measure, and there is a similar rest further on.

Q.64 How many measures are there in the second bar?
There are five, are there not?
A. Yes, sir.

Q.65 Does the tempo keep up through those five bars?
A. It keeps up. It changes time, but the music keeps playing.

Q.66 Now, from the first note in the first measure of bar two, to the last note in the last measure of bar two, there is no change in the music?
A. No, sir.

Q.67 The music is being played all the time?
A. Yes, sir.

Q.68 And while this music is being played those words "What a funny girl" occurs?
A. Yes, sir; they occur while the music is being played.

Q.69 (By Mr. LOWENTHAL.) But they are not sung; they are spoken.
A. They are spoken. They have no reference to the music that is played.

Q.70 (By Mr. LOWENTHAL.) When you have pointed out in the book "Exhibit 2", ~~xxxxxx~~ considering some of the dialogue and the words of the songs, ~~xxxx~~ a certain amount of dialogue--the same word do not appear in the piano-song books.

although the substance may be the same, the words and language are different.

A. Yes, sir; I just saw that.

Q.71 In other words, there is a different translation of the words of the song from the original production?

A. Evidently.

Q.72 Perhaps by a different author---it appears to be by a different translator?

A. Yes, sir.

Q.73 Mr. Redding asked you whether when these words were spoken there did not appear to be music to the words in the vocal score; now, that music is not set to those words, is it?

A. No, sir; there is no air to it.

Q.74 Are the persons who speak that portion of the dialogue in anywise guided by what the orchestra plays?

A. No at all.

Q.75 It is entirely separate and independent? In other words, those words are not set to music?

Mr. REDDING: I object to all this, and wish to strike out the answers, on the ground that it is leading the witness.

Q.76 Are any of the dialogues that you have mentioned, an upon which you were examining Mr. Redding---are there any of them set to any particular melody?

A. No, sir.

Q.77 No melody whatever?

A. No, sir.

Q.78 How are they spoken?

A. Just spoken simply as dialogue.

Q.79 And not very else? A. And nothing else.

Q.80 Are they spoken in any other way, except as on

Q. 80. And is there no music here on the street?

A. That is all.

Q. 81 (By Mr. REDDING.) In all of this dialogue with you have pointed out, you find that there is a clear place by the orchestra at the same time, do you not?

Mr. IOWENTHAL: We object to that, on the ground that the witness has already answered the question.

Q. 82 That is the fact, isn't it? A. Yes, sir.

Q. 83 Now, don't people on the stage who are speaking this dialogue have to do so as to get it in in the proper time with reference to the progress of the music, so that the next singing word can come in on the proper time and move it? A. Well, the rule in these cases, in my opinion, is that a tremolo--the music quivers it off by the people on the stage; the music keeps up the tremolo until the people are through with it.

Q. 84 And as long as the people have not finished speaking, the music goes right along? A. Yes, sir.

Q. 85 The music goes right along while the people are speaking these words? A. No, sir.

Q. 86 Is the opera of "Folk" divided into series of musical numbers? A. Yes, sir.

Q. 87 Are these various portions of the opera given up to dialogue, without any music whatever?

A. Well, I think there is music as far as I can remember. I think I have seen it.

Q. 88 Is it not a fact that between the musical number

occur dialogue spoken between persons, during which there is no music, and the orchestra is quiet, and the singer is not conducting? A. Well, I am afraid I cannot say, yes.

Q.89 This opera "Falka" is similar to other operas or like nature? A. I must confess that I don't remember the opera exactly; but I think I have seen it.

Q.90 Mr. Lowenthal, this that I show you now, is marked "Respondent's Exhibit 1"; and if you will examine it you will find it to be described as the libretto of the opera "Falka", independent of the music; if you will look on page 1, you will observe that it is headed, "Falka. Act I"? A. Yes, sir.

Q.91 And it starts in by giving the setting of the scene, with a full description of the stage apparatus, and grouping, and the names of the chorus---

Mr. LOWENTHAL: (Interrupting.) We object to Mr. Reilly testifying; he is not a witness, and it is improper. I say it is not proper cross-examination.

(The matter of the objection of counsel for respondent having been submitted to the Court for its decision, the Court decides that this examination of the witness by complainant is proper cross-examination.)

Q.92 On the first page of "Respondent's Exhibit 1", which is included in the depositions taken in London, do you find any of the song-words?

A. Well, I couldn't tell you without comparing the two books.

Q.93 Do you find any of the "Respondent's Exhibit 1"?

which is in "Complainant's Exhibit 2"?

A. No, sir; I do not.

Q.94 Is any instance at all, so far as you can examine?

A. No.

Q.95 On page 15 of "Respondent's Exhibit 2" you introduced our evidence which you declared to be a dialogue. Do you find anything similar to that, or do you find the exact words of the libretto introduced here as "Respondent's Exhibit 1", this is the 10th or 11th editions?

A. I couldn't tell you that, because those are entirely different books.

Mr. LOWERY: Different words; by different translators.

A. They appear to be entirely different books.

(It is suggested by the complainant and respondent, that respondents do not use books like the book "Respondent's Exhibit 2" in the production of the opera "Falka" at the Tivoli Opera House.)

Q.96 I understand that the "Complainant's Exhibit A", which is the piano-forte score, was used in the production of the opera "Falka" at the Tivoli? A. Well, I presume it was.

(Examination continued, in conformity of the Court's order, until Thursday, March 2nd, 1899, at half past ten o'clock A. M.)

Saturday, March 2nd, 1889.

Present: Mr. REDDING, of counsel for complainant;
Mr. LOWENTHAL, of counsel for respondent.

EXAMINATION-IN-CHIEF
of
WILLIAM F. ROCHESTER.

On behalf of complainant.

Q.1 (By Mr. REDDING.) What is your business?

A. An actor.

Q.2 Were you ever employed at the Tivoli Opera House?

A. Yes, sir.

Q.3 In what capacity? A. Stage manager and actor.

Q.4 Between what dates, as near as you can remember?

A. Well, I came there on August 6th, 1885.

Q.5 Were you the stage manager in 1885? A. Yes, sir.

Q.6 Were you the stage manager in 1886? A. Yes, sir.

Q.7 What were your duties as such stage manager?

A. To direct the production of pieces; to put them on.

Q.8 Do you remember of the opera "Falke" being produced
at the Tivoli Opera House between the dates of your employment
there?

A. Yes, sir.

Q.9 About what time was it produced?

A. Along about January 4th, 1886.

Q.10 How long did it run? A. Three weeks.

Q.11 Did you put it on afterwards? A. No, sir.

Q.12 Do you know whether it has been put on for more

than three weeks at the Tivoli Opera House?

A I couldn't tell. It was never put on after this time while I was there.

Q.13 This time you speak of was a continuous run of three weeks?

A. Yes, sir.

(Complainant introduces in evidence a programme of the Tivoli Opera House of the opera of "Falka", of the date of January 4th, 1886. Marked "Complainant's Exhibit B".)

Mr. LOWENTHAL: I object to the introduction in evidence of the programme "Complainant's Exhibit B", on the ground that there is no evidence here that this programme was published or exhibited by the respondent, and is therefore incompetent.

Q.14 Do you recognize this programme, "Complainant's Exhibit B" as one of the Tivoli Opera House programmes?

A. I do not recognize the programme, but I recognize the cast.

Q.15 Does that correctly represent the cast of the opera "Falka" as it was given at the Tivoli Opera House?

A. As near as I can remember; yes, sir.

Q.16 The date of that programme is January 4th, 1886?

A. Yes, sir.

Q.17 Was that the first night of the production of the opera "Falka" at the Tivoli Opera House? A. Yes, sir.

Q.18 Does this programme, "Complainant's Exhibit B", contain the cast as you produced the opera "Falka" on that

night? A. As near as I can recollect.

Q.19 Did Mr. Ed. Stevens take the part of "Polbach" in the production of that opera?

A. Yes, sir.

Q.20 Did he play at the Tivoli Opera House that night?

A. Yes, sir.

Q.21 Was that his first appearance there? A. Yes, sir.

Q.22 Did Mr. R. D. Valerga take the part of "Tancred"?

A. Yes, sir.

Q.23 Did Mr. A. Messmer take the part of "Arthur"?

(Question objected to by respondent, as leading and suggestive.)

A. Yes, sir.

Q.24 Did Mr. J. T. Kelly take the part of "Pelican"?

A. Yes, sir.

Q.25 What part did Kate Marchi take? Did she take the part of "Konrad"?

(Question objected to by respondent as leading.)

A. I don't remember that.

Q.26 Did Frank Valerga take the part of "Tekeli"?

A. Yes, sir.

Q.27 Was George Harris an employe of the Tivoli at that time? A. The chorus singer?

Q.28 Yes, sir.

A. Yes, sir.

Q.29 Was Mr. M. Cornell?

A. Yes, sir.

Q.30 Did he take part in that opera? A. Yes, sir.

Q.31 Did Mr. Franklin take part in that opera?

A. Yes, sir.

Q.32 Did Helene Dineon?

A. Yes, sir.

Q.33 Did she take the part of "Falka"?

(Question objected to by respondent, as leading and suggestive.)

A. Yes, sir.

Q.33 Was Mamie Taylor employed there at that time?

A. Yes, sir.

Q.34 Did she take the part of "Edwige"?

(The same objections by respondent.)

A. Yes, sir.

Q.35 Louise Leighton: did she take the part of "Alexina"?

A. Yes, sir.

Q.36 Louise Giroux: did she take the part of "Minna"?

(The same objections by respondent.)

A. Yes, sir.

Q.37 Emily Possazi: did she take the part of "Jonatha"?

(The same objections by respondent.)

A. Yes, sir.

Q.38 Who was the leader of the orchestra at that time?

(Question objected to by respondent, as immaterial and irrelevant.)

A. W. W. Furst.

Q.39 Is that the party who appears on this programme, "Exhibit B", as Conductor?

A. Yes, sir.

Q.40 "Wm. F. Rochester: Stage Manager"; is that yourself?

A. Yes, sir.

Q.41 You were there as stage manager? A. Yes, sir.

A.42 Is this the Argument that was used in the production of the opera "Falka" at the Tivoli Opera House, as shown

on this programme "Exhibit B"?

A. I don't know as I ever read this Argument.

Q.43 Then you cannot state?

A. No, sir. I don't think I ever read it.

Q.44 What book or books, and what kind of books, were used by you as stage manager in the production of this opera "Falka" at the Tivoli Opera House, Mr. Rochester? What I mean by that is, did you have the piano-forte score?

A. Yes, sir; we had a piano score, music.

Q.45 Will you look at "Complainant's Exhibit A" which I now show you, and state if that is or is not a book similar to the ones used by you in the production of "Falka" at the Tivoli Opera House?

Mr. LOWENTHAL: We will admit that that was the book used for the purpose of orchestration, and the rehearsal of the music.

Q.46 Was this libretto, marked in the depositions taken in London as "Respondent's Exhibit 1", the one used in that production?

A. This is not the book that I produced the opera from. I have seen this book though.

Q.47 What was the book that you produced the opera from?

A. Well, from a manuscript. We used to put them on from manuscript books there.

Q.48 Where was that manuscript you speak of procured? Do you know where that manuscript came from?

A. I got it from Jo. Krilling.

Q.49 Do you know where Jo. Krilling got it from?

Mr. LOWENTHAL: I object to the question, on the ground that it calls for hearsay testimony.

A. The book came from Chicago.

Q.50 What did that book contain?

(Question objected to by respondent, on the ground that the book itself is the best evidence of what it contained.)

A. It contained the dialogue of the opera of "Falka".

Q.51 Do you know whether the dialogue, or any of the words spoken, or any of the things known as "gags" were similar to those used in the New York performance of this opera?

A. I think they were. I think they were, but I don't know whether---I am not sure whether they were the exact ones or not. I never had seen the production in New York, but I was told that those were the gags used.

Mr. LOWENTHAL: We object to that answer, and move that it be stricken out, on the ground that the same is hearsay.

Q.52 Where did you see this book which is attached to the London depositions and marked "Respondent's Exhibit 1"?

A. Mr. Krelling showed it to me.

Q.53 When did he show it to you?

A. Just prior to the production of the opera at the Tivoli Opera House.

Q.54 What use did you make of it in the opera? A. None.

Q.55 None whatever? A. No, sir; the books were usually handed to me in manuscript. Very few printed books were

ever given to me.

Q.56 Did Mr. Krelling tell you where he got the book that you did use; or from whom he got it?

A. Well, I practically knew where it came from.

Q.57 Where?

A. From Chicago.

Q.58 From in Chicago?

A. A man by the name of McCarthy, or McCartney, or some such name as that.

Q.59 Do you know who he is?

A. I don't know who he is. I was told by the Bidell that --

Mr. LOWENTHAL: We object to that, as being entirely hearsay.

THE WITNESS: (Continuing) Mr. Bidell told Mr. Krelling that he could get the opera in Chicago.

Q.60 That was in manuscript, was it not?

(Question objected to by respondent, as leading, and suggestive.)

Q.61 Well, that was the book which you said you got in manuscript, was it not?

(Question objected to by respondent, as leading and suggestive, and therefore improper.)

Mr. REDDING: I am endeavoring to identify the particular books he refers to.

Q.62 Which book do you refer to, Mr. Rochester; this printed book attached to the London depositions and marked "Respondent's Exhibit 1", or which one?

A. Mr. Krelling handed me a manuscript book, and also

brought on to the source a book similar to "Responden's 1" which is attached to the depositions taken in London, , and said, "We will produce "Falka" from this".

Q.63 Which book did he bring you?

A. The manuscript book.

Q.64 What did Mr. Krallinger say, if anything, in regard to this manuscript book?

A. Mr. Krallinger did not state anything in reference to the manuscript at all; it was just an order to go ahead with the work.

Q.65 Do you know from what source that manuscript book was made?

A. No, Sir.

Q.66 Have you ever seen any other production of the opera "Falka" except the one at the Tivoli Opera House?

A. I don't think I ever have.

Q.67 Were you not in New York?

A. No, sir; I did not see the production in New York.

Q.68 Never saw any other production of the opera "Falka" than the one at the Tivoli Opera House?

A. No, sir. That is, I saw a production of it in New York, but that was last summer, long after it was produced here at the Tivoli.

Q.69 What production was that which you saw in New York?

A. McCall's production. It was two years after the opera "Falka" was produced at the Tivoli.

Q.70 Will you state how you knew it was the opera "Falka" that you saw in New York?

A. Well, I know it from my knowledge of the music, and

my knowledge of the business.

Q.71 Was there any similarity in the music and business between the production of the opera "Falke" that you saw in New York, and your production of it here at the Tivoli?

A. The music was the same.

Q.72 Will you state in what particulars there was a similarity?

Mr. LOWENTHAL: I object to the question, on the ground that whatever the witness saw in New York transpired subsequent to the commencement of this suit, and there is nothing in issue here justifying the evidence of this witness in that regard.

Q.73 Was the cast the same? That is to say, were the names of the characters the same?

A. Yes, sir.

Q.74 Well, continue, and state in what other points than the music they were similar?

A. Well, as a general production, stage business. I don't remember the lines particularly, because I was not in the cast myself. I don't remember the lines, but as a rule the general idea of the business struck me as being something like the production at the Tivoli; something like it.

Q.75 You were not in the cast of the Tivoli production?

A. No, sir; and I didn't remember any of the lines at all.

Q.76 Were the scenes the same, the stage settings?

A. No, sir.

Q.77 What points of difference were there in the scenes?

[Question objected to by respondent, as entirely

irrelevant and immaterial.)

Q.78 I mean, in the stage settings; of course I don't mean that they should necessarily have the same properties.

Mr. LOWENTHAL: I object to the question, on the further ground that the answer would not set any figure in the disposition of this case.

A. Well, there was considerable difference in the stage settings in the first act; and in the second act it was very similar, but the third act was different.

Q.79 Can you remember the points of difference?

A. Well, what was used on the right, was used on the left in the New York production.

Q.80 Where is the first scene laid in the first act in the opera of "Falka"?

A. Well, I really forget, it has been so long ago.

Q.81 You said that the right entrances in the production here were made the left entrances in the New York production; is that it?

A. In some instances; yes, sir.

Q.82 Well, was or was not the general design of the stage settings the same?

(Question objected to by respondent, as leading and suggestive.)

Q.83 What was the general design of the stage settings of the opera of "Falka" at the Tivoli production? Can you remember, and if so will you state, what the general design of the stage settings in the first act of the opera "Falka" were in the Tivoli production?

42

A. In the Tivoli production we used a set-house on the right of the stage, and a house in angles, the angles pointing to the front of the stage, with shutters, and a trap leading down under the stage.

Q-84 Was it an interior or exterior scene?

A. It was an exterior scene, a street scene. In the New York production it was different.

Q-85 State what it was in the New York production?

A. Well, the house was on the left of the stage.

Mr. LOWENTHAL: I object to this testimony, on the ground that it is irrelevant and immaterial.

THE WITNESS: (Continuing) The set-house was on the left of the stage, and the house which we used in the Tivoli production in the center, was on the right in the New York production.

Q-86 Was it an exterior or interior scene in the New York production? It was an exterior scene, a street scene, wasn't it?

A. Yes, sir.

Q-87 What was the setting in the third act of "Falka" in the Tivoli production, if you remember?

(Question objected to by respondent, as immaterial and irrelevant.)

A. It was an exterior scene, the exterior of a convent on the left, and, I forget, but I think it was a church to the right---I am not sure.

Q-88 What was the setting of the third act of "Falka" in the New York production which you saw?

22

(The same objections by respondent.)

A. It was reversed.

Q.89 Was it an exterior scene?

A. Yes, sir.

Q.90 Was there a convent setting on one side?

A. Well, no; it did not strike me as being intended for a convent.

Q.91 Was it a church scene?

A. Well, yes; something that would represent a church.

Q.92 Was the music the same in both productions?

A. Yes, sir; I think so. It struck me as being so.

Q.93 How long have you been in the theatrical business?

Mr. Rochester? A. Nearly fifteen years.

Q.94 And you are still residing in this city?

A. Yes, sir.

Q.95 And still engaged in that business? A. Yes, sir.

CROSS-EXAMINATION

of

WILLIAM F. ROCHESTER.

Q.1 (By Mr. LOWENTHAL.) Mr. Rochester, the book now shown you, which is "Complainant's Exhibit A", is a book containing all the music, and the words of the songs, and some of the business of the opera "Falka", is it not? A. Yes, sir.

Q.2 And some of the dialogue and indications of stage business? A. Yes, sir.

Q.3 Books similar to this book "Exhibit A" which I have called your attention to, are published and generally circulated

ed, and generally sold in the open market in San Francisco, as well as throughout the United States, and every where else, are they not?

A. Yes, sir.

Q.4 And any one can buy them?

A. Yes, sir.

Q.5 And those books were so in circulation prior to the production of the opera "Falka" at the Tivoli Opera House?

A. We did not have any trouble to get them.

Q.6 And you did get them for the production of that opera?

A. Yes, sir.

Q. 7 You know that the Tivoli management engages a gentleman by the name Koppitz, do you not, who arranged an orchestration of the opera "Falka" for the Tivoli Opera House, from this piano-forte score, "Exhibit A"?

A. Yes, sir; I think Mr. Koppitz is the man that did it.

Q.8 From this piano- forte score that you now have in your hands, the orchestration for the production of the opera "Falka" at the Tivoli Opera House, was prepared by Mr. Koppitz, was it not?

A. Yes, sir; I think it was from this score, or one similar to it.

Q.9 You had not any manuscript score of the music, had you, at this time, other than what was prepared by Koppitz from this piano-forte score?

A. I never had anything to do with the orchestration.

Q.10 But do you not remember, as stage manager, that Mr. Koppitz did prepare an orchestration from this piano-forte score which you have now in your hand?

A. They sometimes have two men.

Q.11 Lindtner and Koppitz?

A. Yes, sir; I think so.

Q.12 Now, Mr. Rochester, I will ask you to state, as an actor and stage manager, if that piano-forte score contains indications of business, such as from that book alone you would be in a position to prepare this opera for the stage, so far as the position of the people is concerned?

A. Only in places.

Q.13 Quite a number of places?

A. Yes, sir; there are a number of places in here that tells what to do. For instance, "There the bells go", and one would naturally know from that that the bells are to be rung there.

Q.14 Now, does or does not that book, as it is published, printed and circulated, which you have in your hand, "Complainant's Exhibit A", contain the major portion of that opera, in fact; that is, the words and music of the songs are the principal part of the opera as it is produced, are they not?

A. I don't understand the question.

Q.15 (Q.14 repeated.) A. Well, if you don't speak of dialogue; yes, sir; but if you speak of dialogue, then I say you couldn't get along with the score---you could not get along with the vocal score alone.

Q.16 But you have known instances, Mr. Rochester, have you not, where the dialogue was made up by any person qualified to do it, to suit the words of the songs, and the music, and an opera thus produced in that manner?

A. Yes, sir; I have known operas to be made up.

Q.17 From that book, or a book of that character; that is, by adding to the words of the songs and music contained in this book, a dialogue was prepared to suit it?

(Question objected to by complainant, as immaterial, irrelevant and incompetent, and not proper cross-examination.)

Q.18 What I mean is this: suppose a person to be qualified, and understanding that business, should obtain a piano-forte score with the directions published in it, if he possesses the originality, could he not produce a production of the opera "Falka"?

A. I would not vouch for its success.

Q.19 In any opera, Mr. Rochester, is not the musical portion of it the main portion of the opera, whether it be grand or comic opera; the dialogue is a sort of secondary consideration, is it not?

A. I don't think so. You cannot get along without good dialogue and good music.

Q.20 That is very true, but is not the musical success of the opera the main thing?

A. Well, I have known good dialogues to make poor music stand out to better advantage, than good music to make bad dialogue stand out, in many instances.

Q.21 Well, does not the dialogue in "Falka" mainly consist of puns and rags? A. I don't remember enough of it to say. I don't remember half a dozen speeches in it.

Q.22 What I want to get at, Mr. Rochester, is this: is it not a fact that the major part of the time occupied in

midst of a musical number?

A. All that I have seen; yes, sir.

Q.5 Was not the book that Mr. Krelling handed to you the book which you have spoken of as having been received from Chicago?

A. I couldn't tell you. There were twenty scores of it.

Q.6 Mr. Krelling handed you the book or manuscript, and said that the opera "Falka" was to be the next opera produced; you so stated?

A. Yes, sir.

Q.7 Was that the book you had reference to as being a manuscript? Was it a manuscript or a printed score?

A. A manuscript.

Q.8 Did you proceed to put on the opera from that manuscript?

A. Yes, sir; but I used one of those books like "Exhibit A" also.

Q.9 (By Mr. LOWENTHAL.) And you had twenty of those?

A. Yes, sir.

Q.10 (By Mr. REDDING.) What did the manuscript that Mr. Krelling handed to you contain, as well as you can remember?

A. Well, it contained a general idea of the stage business---business required for the piece.

Q.11 Did it contain the dialogue?

A. Yes, sir.

Q.12 (By Mr. LOWENTHAL.) Something like all prompt-books of operas that are put on, I suppose?

A. Yes, sir.

Q.13 (By Mr. REDDING.) Did it contain the directions for the setting of the scenes, that manuscript?

MR. LOWENTHAL: I interpose the objection that this is not a proper examination.)

Mr. REDDING: Then I will withdraw the question.

Q.14 You stated that it contained the general directions, I understand? A. I didn't contain the directions for the setting of the scenes, or anything of that kind.

Q.15 (By Mr. LOWENTHAL.) That was a matter you used your own judgment about, was it not?

A. Yes, sir, I used my own judgment about it. I had an idea of what the setting was.

Q.16 (By Mr. REDDING:) Where did you get that idea from, if you please? A. Well, from hearsay.

RE-CROSS-EXAMINATION

of

WILLIAM F. ROCHESTER.

Q.1 (By Mr. LOWENTHAL.) That published score there that you are now holding in your hand, "Complainant's Exhibit A", upon the first page thereof, contains the Argument of the whole opera, does it not? A. Yes, sir.

Q.2 Including dialogue, as well as the songs; that is, of the entire opera? That is, it is a synopsis of the dialogue?

A. It is the story of the opera.

Q.3 The entire story of the opera abbreviated?

A. Yes, sir, as followed out by this score.

Q.4 And any person having that synopsis of the opera, with the score, couldn't he prepare a dialogue to suit it more readily than otherwise? A. Yes, sir.

Q.5 Would you not be in a position, if you had never

seen this opera before, if you should find this score, and this synopsis, as you see it on the first page there of "Complainant's Exhibit A", wouldn't that give you a full idea of the people on the stage, and a full idea of the scenes?

A. It don't say anything about scenery.

Q.6 But it would give you an idea of what was wanted on the stage, wouldn't it, in the three acts?

A. Well, in the first act it speaks of a convent, but the convent does not occur until the third act. There is a general idea of the piece given here, right through, and any stage manager can with alibretto put it on fairly well.

Q.7 Please look at page 160 of "Exhibit A", and state whether or not there is some dialogue there spoken?

A. Yes, sir; it is spoken.

Q.8 It is accompanied by music? A. Yes, sir.

Q.9 But are the words set to the music?

A. Well, they fill out the time that the music is being played.

Q.10 That is the tremolo of the music? A. Yes, sir.

Q.11 It is a musical number. A. Yes, sir.

Q.12 But it is not set to the words that are spoken on the stage? A. No, sir.

Q.14 It is simply an independent music, and the people are not guided by the music, and there is no particular melody attached to the words that are there? A. No, sir.

Q.15 But they are simply spoken, just as a person would speak to another off the stage?

A. They are spoken on the stage in a conversational way.

Q.16 But accompanied by the tremolo?

A. Yes, sir; and the latter is governed by the time taken up by the dialogue.

Q.17 Are there any other places in that book "Exhibit A" of that kind; any indication of business or dialogue?

A. I don't see any more. I see indications of business.

Q.18 (By Mr. REDDING.) Do you call the music, or a musical number a part of the dialogue in an opera; or is an opera divided into two classes, namely, musical numbers, and periods of dialogue?

A. Two classes.

Q.19 Then that which you pointed out is a part of the class known as dialogue, or a part known as a musical number?

A. Part known as a musical number.

Q.20 (By Mr. LOWENTHAL.) But spoken? A. Yes, sir.

~~CONFIDENTIAL~~

Wednesday, April 3rd, 1889.

Present: Mr. REDDING, of counsel for complainant;
Mr. FRENCH, complainant.
No appearance on behalf of respondents.

This day was set, at the request of complainant's counsel for proceeding further with the examination.

No appearance being made by or on behalf of respondents the examination is further continued in compliance with request of complainant's counsel, to Friday, April 5th, 1889, at two o'clock P.M.

Friday, April 5th, 1889.

Present: Mr. REDDING, of counsel for complainant;
Mr. LOWENTHAL, of counsel for respondents;
Mr. FRENCH, complainant.

Mr. Lowenthal objects to the further taking of testimony herein on the ground that the time within which testimony may be taken herein has expired.

The Examiner declines to take any further testimony herein until an order shall have been obtained from the Court allowing further testimony to be taken.

Friday, April 12th, 1889.

Present: Mr. REDDING, of counsel for complainant;
Mr. LOWENTHAL, of counsel for respondents.

EXAMINATION-IN-CHIEF

of

THOMAS HENRY FRENCH.

On behalf of complainant.

Q.1 (By Mr. REDDING.) State your name, place of residence and occupation.

A. My name is Thomas Henry French, my residence New York, business, theatricals of all kinds, manager and play owner, and so forth; and I am complainant in this suit.

Q.2 Mr. French, the respondents in this suit, namely, the Krelling Brothers, have, among other testimony, introduced what they denominate "Respondents' Exhibit 1", attached to a deposition of Alfred Hays taken in London. I will hand that to you, and ask you: do you know this book?

A. I know the book.

Q.3 I call your attention to the writing on the opening page of the libretto of that book. The writing there says: "Property of F. J. McCarty. Presented to him by E. F. Steyne, Comedy Theatre, London, E.". Do you know who E. F. Steyne is?

A. Yes, sir.

Q.4 Who was he in 1884?

A. He was a stage manager that I imported from London.

Q.5 Where was the operetta of Falke first produced in America?

A. Philadelphia.

Q.6 I will call your attention to the first page inside the cover of said "Respondents' Exhibit 1", and to the writing thereon, which writing is as follows: "Original cast in "America. Produced 1st time in America at Haverly's Broad "St. Theatre, Philadelphia, Tuesday, March 4th, 1884"; and then follows a list of names of the persons comprising the cast of characters. Now read that list and see whether or not they correspond to your production of the operetta at that place at that time?

(Question objected to by respondents, as entirely immaterial, irrelevant and incompetent.)

A. That was the original cast, to the best of my knowledge and belief. There might have been one name changed.

Q.7 Do you know whether this writing is in the handwriting of Mr. Steyne or not?

A. I do not.

Q.8 Have you ever seen any other copies of this book which is marked "Respondents' Exhibit 1"?

A. About twenty, which were imported for the artists to study from.

Q.9 How were they imported, and by whom?

A. By me.

Q.10 Where did you receive them from?

A. From Alfred Hays.

Q.11 Who is Alfred Hays?

A. He is a music publisher in London, who owned an interest in the opera of Falka.

Q.12 Was this book here marked "Respondents' Exhibit 1" published for circulation?

(Question objected to by respondents, on the ground

Q.6 I will call your attention to the first page inside the cover of said "Respondents' Exhibit 1", and to the writing thereon, which writing is as follows: "Original cast in "America. Produced 1st time in America at Haverly's Broad "St. Theatre, Philadelphia, Tuesday, March 4th, 1884"; and then follows a list of names of the persons operating the cast of characters. Now read that list and see whether or not they correspond to your production of the operetta at that place at that time?

(Question objected to by respondents, as entirely immaterial, irrelevant and incompetent.)

A. That was the original cast, to the best of my knowledge and belief. There might have been one name changed.

Q.7 Do you know whether this writing is in the hand writing of Mr. Steyne or not? A. I do not.

Q.8 Have you ever seen any other copies of this book which is marked "Respondents' Exhibit 1"?

A. About twenty, which were imported for the artists to study from.

Q.9 How were they imported, and by whom? A. By me.

Q.10 Where did you receive them from?

A. From Alfred Hays.

Q.11 Who is Alfred Hays?

A. He is a music publisher in London, who owned an interest in the opera of Palka.

Q.12 Was this book here marked "Respondents' Exhibit 1" published for circulation?

(Question objected to by respondents, on the ground

face showing the publication to have been prior to the time of the alleged proprietorship by this complainant.

A. I do know.

Q.16 What is your answer; what is the fact?

A. That they were certainly reserved.

Q.17 How long have you been in the play business, Mr. French?

A. Twenty-two years.

Q.18 To what firm do you belong?

A. Samuel French & Son.

Q.19 Who is Samuel French?

A. My father, who resides in London; the head of our house.

Q.20 Have you had any familiarity, and if so to what extent, with the producing of plays from the manuscripts of authors, and with the production of the rights of authors?

A. I have had great experience all of said twenty-two years.

Q.21 Will you state then what method was followed in this instance in the production of Falke in London, and also in the production of it in the United States, regarding the proprietorship of the play?

A. The owners in London sold the proprietary right of America to me, and I sub-let it to Mr. John A. McCall, the manager for most of the United States.

Q.22 Have you paid royalties to the owners of this opera in London?

(Question objected to by respondents, as entirely irrelevant and immaterial.)

A. I have.

Q.23 Has Mr. McCall paid you?

(The same objections by respondents.)

A. Many thousands of dollars.

Q.24 Has there been any other production of this operetta of Falke in the United States except the one involved in this suit, which was not under your knowledge and information?

(Question objected to by respondents, as incompetent immaterial and irrelevant.)

A. No, there has not.

Q.25 If there had been would you have known it?

(The same objections by respondents.)

A. Yes, sir; I would have known it.

Q.26 Have there been any performances of the operetta Falke for which royalties have not been paid to you or your agents in America, except the one involved in this suit?

(Question objected to by respondents, as entirely irrelevant and immaterial.)

A. No, there have not.

Q.27 Have you received any royalties for the production of this opera by the respondents, at the Tivoli?

A. No, I have not.

Q.28 Have any of your agents or representatives received anything from the respondents? A. No, they have not.

(It is agreed by both complainant and respondents as a fact that respondents have paid complainant nothing on account of royalties for the production of this operetta Falke.)

(Question objected to by respondents, as entirely incompetent; and as leading and suggestive.)

A. Mr. Samuel French is my father, and my partner--- the same firm.

Q.35 Mr. French, I desire to call your attention to your testimony taken by deposition in New York, and to certain questions and answers therein, for further explanation. Do you know the Mr. McCarty whose name appears in writing at the top of the second page of the book marked "Respondents' Exhibit 1", attached to the deposition taken in London?

A. It says, "Property of F. J. McCarty. Presented to him by E. T. Steyne, Comedy Theatre, London E.".

Q.36 Well, do you know who that Mr. McCarty is?

A. I do not.

Q.37 Do you know what the Comedy Theatre in London is?

A. I do.

Q.38 Was Mr. Steyne connected with the Comedy Theatre in London?

A. He was.

Q.39 Was this opera produced there, the opera Falke?

A. It was, I think. To the best of my knowledge and belief it was.

Q.40 Will you state for what purpose Mr. Steyne came over to America, to Philadelphia, and under whose employ?

(Question objected to by respondents, as entirely irrelevant and immaterial.)

A. As stage manager, and under my employ.

Q.41 Did he come over for the purpose of the production of this opera of Falke?

(Question objected to by respondents, as leading and suggestive; and as irrelevant and immaterial.)

A. He did.

Q.42 Mr. REDDING: Mr. Examiner, I desire to proceed in the proper way, and I desire instructions as to how to proceed in this particular: I wish to have the witness testify as to the relation occupied by Mr. Steyne in reference to the composers of this opera Falke, and to the agents of the composers, and assignees in America.

THE EXAMINER: I would suggest this: Why not ask him if Mr. Steyne sustained any relation to those people, and if so, what.

Q.42 I will ask you this question, Mr. French: Did Mr. Steyne occupy any relation whatever to the composers of this opera Falke, or to their assignees, or licensees in England, or in the United States, and if so, what?

(Question objected to by respondents, as incompetent irrelevant and immaterial.)

A. I supposed that in London he was the second stage manager; and when I was about to purchase the opera Falke, we had to know the business, and they selected this gentleman as knowing the business, and sent him over here in my employ.

Mr. LOWENTHAL: We ask that that be stricken out, on the ground that it is a matter not within the knowledge of this witness; he is speaking simply from supposition.

Q.43 Who recommended Mr. Steyne to you?

(Question objected to by respondents, as irrelevant

and immaterial.)

A. Mr. Farnie.

Q.44 The composer of the operetta? A. Yes, sir.

Q.45 Do you know of your own knowledge whether Mr. Farnie gave any instructions to Mr. Steyne regarding the business of this opera?

A. He did.

Q.46 Will you explain to the Court what you mean by the term "business" of the opera, as in this instance is intended?

A. The word "business" in an opera means where they cross the stage, and the grouping of the characters, and the situation at the end of an act when the curtain comes down, and everything of that kind. It is impossible to produce an opera properly without it.

Q.47 Do you know, of your own knowledge, who gave Mr. Steyne the business of this opera for him to proceed with as stage manager?

A. No, I do not. I was in New York, and he was in London.

Q.48 Who sent Mr. Steyne to you? A. Mr. Farnie.

Q.49 Will you state what the duties of a stage manager are with reference to the production of an opera?

(Question objected to by respondents, as entirely irrelevant and immaterial, and not part of this issue involved in this case.)

Q.50 Well, what were the duties of Mr. Steyne in connection with the production of this opera?

(The same objections by respondents.)

A. Mr. Steyne's duties were to see that the

principals and chorus ~~xxxxx~~ sang properly; to give them the different bits or points of business; and to superintend the rehearsals so as to make a proper first ~~xxxxxxxxxx~~ performance.

Q.51 What were his duties with reference to the wishes of the composer of this opera in reference to its production in America?

Mr. LOWENTHAL: We object to that, on the ground that it is entirely incompetent, in this; that it is already in evidence that Mr. Styne prior to his employment by Mr. French was in London, and therefore it is not within the personal knowledge of Mr. French as to the desires of the author upon this subject.

A. He had nothing whatever do to with the business or the sale of fees, or anything connected with the opera; he simply had to do with the production.

Q.52 Had he any right to assign, sell or transfer the proprietorship of the title to this opera?

(Question objected to by respondents, as incompetent, as not being within the knowledge of this witness.)

Q.53 Do you know of your own knowledge whether he had or not? A. I do. He had no rights whatever in the selling or assigning of the opera.

Mr. REDDING: I would like to ask the Examiner for instructions regarding the following matters: in the deposition of Mr. French taken in New York occurs the fol-

lowing question and answer---but before reading that I will state that I desire to have Mr. French's attention called to this question and answer, because I think there is a typographical error in the writing of the answer, or a statement where the words following each other do not make sense. I do not ask to have any further question and answer made upon that point if it is improper, but I desire to have that correction put in now for the purpose of correcting that error.

Mr. LOWENTHAL: We object to that statement of counsel on the ground that it is leading and suggestive, being made in the presence of the witness.

Q.34 (By Mr. REDDING.) I will now read to you the following questions and answers, and ask you to state if they are correct: "Q. In what form have the dialogue and words and songs of said operetta "Palka" always been? A. Some in manuscript and some in book form. Q. Have they at any time been published, printed, or in any way dedicated to the public, or made in any form of publication whatsoever? A. Parts of the libretto have been published, but enough has not been published to secure us our rights in this country". Is that answer correct?

Mr. LOWENTHAL: We object to that question, on the ground that the continuation of the deposition of Mr. French was limited by the order of the Court to new matter with relation to the books offered in evidence by the defense, and that this deposition was not reopened with

a view of explaining or contradicting the testimony of the witness taken by way of deposition some two years ago.

Q.55 (By Mr. REDDING.) Well then, Mr. French, just read your own deposition taken in New York, and see if it makes sense?

A. (After reading the deposition) I have got nothing to add to this; this is quite correct.

CROSS-EXAMINATION

of

THOMAS HENRY FRENCH.

Q.1 (By Mr. LOWENTHAL.) You say, I suppose, that on the 5th of May, 1886, you were a citizen and resident of New York City, State of New York?

A. Yes, sir.

Q.2 Samuel French is your father?

A. Yes, sir.

Q.3 And at that time was a resident of the City of London?

A. Yes, sir.

Q.4 What business relations do you bear towards Mr. Samuel French?

A. I am his partner.

Q.5 Were you his partner on the 5th of May, 1886?

A. I was.

Q.6 Were you his partner at the time mentioned in the bill of complaint in this case; on the 24th of January, 1886, were you such copartners?

A. We were.

Q.7 What was the firm name?

A. Samuel French & Son.

Q.8

Q.8 This opera "Falca", I understand, was transferred by the alleged author, Mr. Farnie, to whom?

A. To the best of my knowledge and belief it was transferred to me personally.

Q.9 Was that transfer in writing? A. It was .

Q.10 Where is it? A. I haven't the faintest idea now. It is either here in evidence in this suit, or in the New York office.

Q.11 I will call for that writing or transfer. Will you swear that that transfer was made to you personally, to Thomas H. French, of the operetta Falca now in litigation?

A. I will.

Q.12 You will now swear positively that it was not made to Samuel French? A. No, it was made to T. H. French.

Q.13 Nor to Samuel French & Son?

A. No, sir; it was made to T. H. French.

Q.14 Then the testimony of Mr. Farnie, the alleged author of the operetta Falca, that he made it to Samuel French, is not true?

Mr. REDDING: I object to that , until he shows what the testimony of Mr. Farnie is.

A. An assignment to one is equivalent to an assignment to the other. It was made to me simply because I was a resident of this country, and was in this country.

Q.15 When did you last see that assignment?

A. I could not say.

Q.16 What is the date of it?

A. I could not tell, here.

Q.17 Is it dated as alleged in the complaint on the 24th of January, 1886?

A. I cannot say.

Q.18 Have you any objection to producing that assignment?

A. None whatever.

Q.19 Did you have possession of that assignment in this country? Did you ever have any written assignment in your possession?

A. I did.

Q.20 And you say that assignment is to Thomas H. French, and not to Samuel French?

A. Yes, sir.

Q.21 And not to Samuel French & Son? A. Yes, sir.

Q.22 And you say you are prepared to produce that assignment?

A. I am.

Q.23 Then Mr. Farnie is mistaken when he says in his deposition that he transferred it to Samuel French?

Mr. REDDING: I object to that question until the testimony of Mr. Farnie is given to the witness.

Q.24 To the seventeenth interrogatory of his deposition Mr. Farnie said: "The op^{er}etta was publicly performed throughout the United States by Mr. Samuel French, to whom it was assigned by me before publication. The libretto never has been published. I received profit from such performances under the agreement I made with Mr. Samuel French". Is that statement in that respect true, or what would you say?

A. The statement is perfectly true, because he made it to Mr. Samuel French for convenience. He was in London, and I was in America.

Q.25 Then the assignment was made to Mr. Samuel French?

A. No, sir; it was made to me. Mr. Samuel French

being in London could not go into court and protect our rights, but I being here could. That is the same with every play that we buy, it is made to me personally.

Q.26 To the fourteenth interrogatory Mr. Farnie said :
"I sold all the right, title, and interest I had in the adaptation of Falca to Mr. Samuel French for his use in the United States of America only. The consideration named in the assignment was one dollar. The actual consideration was an agreed portion of the profits of the representation". Is that portion of the testimony of Mr. Farnie true?

A. Certainly it is all true. Samuel French is the same as T. H. French; they are partners.

Q.27 Then the assignment was to you as copartners?

A. It is not so ^{to} mentioned in the assignment, but all operettas are made to me personally so I can protect our rights in this country.

Q.28 For the joint benefit of yourself and father?

A. Yes, sir.

Q.29 The operetta in fact then was the property of yourself and father at the time of the commencement of this suit?

A. Yes, sir.

Q.30 In your verified bill of complaint in this suit you say, "That the dialogue and words of the songs of the said operetta Falca are now and always have been in manuscript, and have never at any time been published, printed, or in any way dedicated to the public, or made in form of publication".

A. The dialogue has never been published.

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Q.31 Have the words of the songs been published?

A. They were not, to my knowledge, at that time.

Q.32 In the year 1886?

A. I could not tell the year now.

Q.33 Do you mean to say that this book, "Defendants' Exhibit C", has not been known to you to have been published in the year 1886?

A. I never saw a page in that book before to-day.

Q.34 How do you know then that these books were sold at your theatre?

A. This operetta was not produced at my theatre.

Q.35 Where was it produced?

A. At Broadstreet Theatre, Philadelphia.

Q.36 How do you know that these books were sold there?

A. I don't know that they were, but I know that is what that book is, a libretto.

Q.37 Have you ever seen the musical score of "Falka"?

A. I have.

Q.38 Has that been published and circulated?

A. Yes, sir.

Q.38 And sold in open market to whoever desires to buy?

A. Yes, sir.

Q.39 When did you first see the piano-forte score of "Falka"? A. When it was originally produced in Philadelphia.

Q.40 Then at the time of the commencement of this suit you had seen the piano-forte score?

A. That book does not contain the words of the songs.

I say in the bill of complaint, "The dialogue, and words of "the songs".

Q.41 Then you will admit the fact that the words of the songs have been published and circulated and sold in open market?

A. Yes, sir; the same as with any other opera.

Q.42 The entire music of the piano-forte score has been sold in open market prior to the commencement of this suit?

A. Yes, sir.

Q.43 And also the words of the songs?

A. I couldn't say as to that.

Q.44 The book marked "Exhibit C", attached to the deposition taken in London, contains a synopsis of the entire opera, does it not?

A. Yes, sir; an argument.

Q.45 And that publication bears date October 29, 1883; selling price, sixpence in London; have you observed that, Mr. French?

A. Yes, sir.

Q.46 And it is published by Alfred Hays? A. Yes, sir.

Q.47 Alfred Hays; is he the person you spoke of a few moments ago, when you said he was part owner of the opera "Falka"?

Mr. REDDING: The date of the publication of this book "Exhibit C" referred to does not appear on that book. Mr. Lowenthal remarked as if it did, but it is only a lead pencil mark on it there. I don't care to have the date of the publication assumed as being that, and as appearing there when it does not.

A. Yes, sir.

Q.48 And has been since the time of the transfer to you?

A. I could not answer that.

Q.49 When did Mr. Hays become a part owner of this opera?

A. I couldn't say as to that.

Q.50 Have you remitted to him a proportion of the royalties received from time to time?

A. I always remitted to Mr. Farnie, and he divided with Mr. Hays.

Q.51 Then there is a transfer from Mr. Farnie to Mr. Hays of some interest in this opera?

A. I believe there is, but what portion, or anything about it, I don't know.

Q.52 You only receive a portion of the proceeds of this opera?

A. That is all.

Q.53 What portion do you receive? A. One third.

Q.54 Who receives the other? A. Mr. H. B. Farnie.

Q.55 And who receives the other third?

A. Mr. Farnie gets the other two thirds, and makes some arrangement with Mr. Hays.

Q.56 Mr. Hays appears as the publisher of the two books, exhibits "A" and "C" attached to the London depositions?

A. Yes, sir; I believe he does.

Q.57 Have you any idea as to what kind of production of the opera "Falka" there was at the Tivoli? You didn't see it, did you?

A. I did not.

Q.58 You don't know what libretto, or what was used there, or what songs, or what music, in the production of

"Falka"?

A. No, sir; I do not.

Q.59 When did you first become acquainted with the fact of Mr. Krelling of Krelling Brothers having produced the operetta "Falka"?

A. I read it at the time in the paper; I don't know when.

Q.60 At the time of the production, or prior thereto?

A. The first part of it was an article stating how much money they had made on it, and it must have been subsequent to that time.

Q.61 That is the first thing you knew of it?

A. Yes, sir.

Q.62 Where is Mr. Steyne now, do you know?

A. I do not.

Q.63 Or Mr. McCarty? A. I don't know Mr. McCarty.

Q.64 Is Mr. McCarty in the theatrical business?

A. Not to my knowledge.

Q.65 Did you ever have any personal conversation, prior to the production of this opera, with Mr. Farnie with relation to "Falka"? A. No, I don't think I ever did.

Q.66 Did you have any conversation with Mr. Steyne with relation to the production of "Falka" in London? A. No.

Q.67 Or here; in Philadelphia?

A. I was in Philadelphia for the production, and I suppose I talked. I don't remember about it now.

Q.68 You have no recollection as to what was the purport of the conversation, or what the conversation was about, between you and Mr. Steyne, at that time?

A. Well, not further than he wanted so much money, and

how he wanted it, his salary, and so on.

Q.69 And that is all the conversation you had with him on the subject of "Falka"?

A. That is all I remember of; yes, sir.

RE-EXAMINATION

of

THOMAS HENRY FRENCH.

Q.1 (By Mr. REDDING.) Mr. French, you described this little book which is attached to the deposition of Alfred Hays on behalf of respondents, marked "Exhibit C", as being a libretto of the opera "Falka". Will you state what you mean in this instance by the word "libretto"?

A. I mean the argument, and the words of some of the songs. I could not tell whether the words of all the songs are there or not. Such a book is always sold on the production of an opera.

Q.2 Is it a book something similar to what we have sold by the boys in the lobby as "Books of the opera, books of the opera?"

A. Something similar; yes, sir.

Q.3 For what purpose are such books used?

A. Well, people liking a song want to read the words over; but it is really for the publisher to make money.

Q.4 It is used where?

A. By the people in the auditorium only.

Q.5 Does this book contain any of the dialogue, stage business, situations, acts of scenery, and so forth?

(Question objected to by respondents, as incompetent, the book itself being the best evidence.)

A. No, it does not.

Q.6 (By Mr. LOWENTHAL.) I will now ask you, Mr. French, if you will produce that assignment from Fannie we have been referring to?

A. Yes, sir; I will do so with pleasure, if it is not already in evidence.

(The reading of the above deposition to the witness, and the signing of the same by him, are, by agreement of counsel, waived.)

I Certify that the foregoing depositions were taken pursuant to the notice, ~~examined sides and notes hereunto prefixed~~ at the place stated in the caption to said depositions, at the several times set forth in said depositions, in my presence, and in the presence of counsel for the respective parties to the cause in said caption entitled that, previous to giving his testimony, each of the witnesses in said depositions named was by me duly sworn to tell the truth, the whole truth and nothing but the truth, in said cause that said depositions were, ~~except in so far as they were taken down in writing by the witnesses~~ taken down in shorthand writing and transcribed by J. A. G. ~~except in so far as they were taken down in writing by the witnesses~~ pursuant to stipulation and agreement of counsel, that said depositions, after being so transcribed were read by or by me to, the said witnesses, and signed by them, respectively, except in those cases where such reading and signing were, by agreement of said counsel, waived as in said depositions set forth and that I have retained said depositions for the purpose of delivering the same with my own hand to the Court for which they were taken

Accompanying said depositions, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein

I further Certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof

In Witness Whereof, I have hereunto set my hand,
this fourth day of February A D 1891

J. A. G.
Notary in Charge
U. S. District Court for the S. D.